



भारत का राजपत्र

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सं. 16] नई दिल्ली, अप्रैल 10—अप्रैल 16, 2016, शनिवार/चैत्र 21—चैत्र 27, 1938

No. 16] NEW DELHI, APRIL 10—APRIL 16, 2016, SATURDAY/CHAITRA 21—CHAITRA 27, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
 Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
 PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
 (Other than the Ministry of Defence)

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

(न्यायिक अनुभाग)

नई दिल्ली, 12 अप्रैल, 2016

का.आ. 643.—केंद्रीय सरकार, सिविल प्रक्रिया संहिता, 1908 (1908 का 5) की प्रथम अनुसूची के आदेश संख्या XXVII के नियम 8-ख के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्वारा श्री गुल असनानी, अपर सरकारी अधिवक्ता और श्री वाई. के. गोतवाल, सहायक विधि सलाहकार को मुंबई स्थित बंबई उच्च न्यायालय (मूल और अपील अधिकारिता) में सरकारी प्लीडर नियुक्त करती है।

[फा. सं. जे-11024/1/2016-न्या.]

सुरेश चंद्र, अपर सचिव

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

(JUDICIAL SECTION)

New Delhi, the 12th April, 2016

S.O. 643.—In exercise of the powers conferred by clause (a) of rule 8B of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), the Central Government hereby appoints Shri Gul Asnani, Additional Government Advocate, and Shri Y. K. Gotwal, Assistant Legal Adviser as Government Pleader's in the High Court of Bombay at Mumbai (original and appellate jurisdiction).

[F. No. J-11024/1/2016-Judl.]

SURESH CHANDRA, Addl. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 31 मार्च, 2016

का.आ. 644.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कैंटोनमेंट एग्जीक्यूटिव अफसर, कैंटोनमेंट बोर्ड, म्हो के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/63/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-13012/5/2005-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 31st March, 2016

S.O. 644.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/63/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Cantonment Executive Officer, Cantonment Board, Mhow and their workman, which was received by the Central Government on 31-03-2016.

[No. L-13012/5/2005-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR**
NO. CGIT/LC/R/63/2006

General Secretary,
Suraksha Asainik Karmchari Sangh,
Garden No.19, Peat Road,
Mhow Workman/Union

Versus

Cantonment Executive Officer,
Cantonment Board,
Mhow Management

AWARD

Passed on this 2nd day of March, 2016

1. As per letter dated 21-9-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-13012/5/2005-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Cantonment Executive Officer, Cantonment Board, Mhow in terminating the services of Shri Firoz Khan w.e.f. 4-9-2000 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/2 to 4/6. Case of Ist party workman is that he was appointed as skilled labour on the job of blacksmith Welder on 21-8-96 in workshop of the Cantonment Board Mhow. He was not given appointment letter. He was paid out of monthly muster rolls. Certificate was given to him by Vice President and Corporator of Cantonment Board. He was continuously working in workshop of cantonment board w.e.f. 21-8-96 to 4-9-2000 for period of 4 years as per statement submitted before RLC, Bhopal. He was shown continuously working during above said period. His services were orally terminated as 2nd party wanted to fix up another person of their choice by favour. On his repeated request, he was given false assurances and reconsideration. Workman reiterates that his services are terminated malafide without reasons. He worked for a 560 days within a period of 4 years. He was denied regularisation. His services were terminated without giving opportunity for his defence. Termination of his service is without notice. He claims reinstatement with backwages.

3. 2nd party filed Written Statement on 3-7-08 opposing claim of workman. As per 2nd party management, workman was engaged purely on daily wage basis as per need basis. Workman was not given appointment letter. Certificate issued by Vice President or corporator of Cantonment Board cannot be considered as appointment letter. It is denied that workman was continuously working from 21-8-96 to 4-9-2000. It is reiterated that workman was engaged on daily wages on need basis. When there was no work, he was not engaged. Workman has not mentioned details of other person favoured by the Cantonment Board for appointment in his place. 2nd party denies that workman was continuously working for 4 years. Rather it is pleaded that workman was engaged on daily wages. On such ground, 2nd party submits that workman is not entitled to any relief.

4. Ist party workman submitted rejoinder on 24-9-08 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Cantonment Executive Officer, Cantonment Board, Mhow in terminating Both parties not adduced evidence, the dispute under reference could

the services of Shri Firoz Khan w.e.f. 4-9-2000 is legal and justified?

(ii) If not, what relief the workman is entitled to?"

REASONS

6. The term of reference pertains to legality of termination of service of workman in violation of Section 25-F of ID Act. Ist party workman failed to adduce evidence in support of his claim. His evidence is closed on 7-10-2014. Management also failed to participate in reference. Evidence of management is closed on 7-4-2015.

7. As both parties failed to participate in reference and adduced evidence, the dispute under reference could not be decided on merit. Accordingly I record my finding in Point No.1.

8. In the result, No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 645.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ सं. 22/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O.645 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal-cum-Labour Court, Godavarkhani (IT/ID/22/2015) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 05.04.2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DIST. AND SESSIONS COURT, GODAVARIKHANI

Present :

SRI G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

INDUSTRIAL DISPUTE No. 22 OF 2015

Friday, the 26th day of February, 2016

Between :

Namala Chandraiah, S/o. Rajaiah,
Age 50 years, Occ: Ex.Employee,
R/o.Singapuram, Mandal Mancherial,
Dist.Adilabad

...Petitioner

And

1. The General Manager,
SC Co.Ltd., Srirampoor Projects,
Post Srirampoor, Dist.
Adilabad.
2. The Chief General Manager,
SC Co.Ltd., Srirampoor Projects,
Post Srirampoor,
Dist.Adilabad

...Respondents

This case coming before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate for the petitioner and of Sri D.Krishna Murthy, Advocate for the respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following :-

AWARD

1. This petition is filed U/Sec. 2(A)(2) of I.D. Act challenging the dismissal of the petitioner by the respondents praying for his reinstatement into service with continuity of service, all attendant benefits and full back wages.

2. Petitioner was dismissed from service by the respondents vide office order dt.01-05-2006 with the following charge.

CHARGE:-

“Habitual absence from duty without sufficient cause”.

3. Petitioner challenges his punishment as follows. He was appointed on 3-5-1986 as Badli Filler. The petitioner has got 15 more years of service. The charge of absenteeism was foisted and petitioner was dismissed from service w.e.f., 1-5-2006. He rendered 20 years service and put in more than 100 musters per year. The punishment of dismissal is arbitrary and illegal. He represented several times for his reinstatement but it was not considered by the respondents. His family has fallen on the road due to his unjust dismissal from service. Hence, the petitioner prays to allow the petition.

4. In response to this challenge, respondents filed counter justifying the dismissal of the petitioner. The petitioner was dismissed from service in the year 2006. Petitioner kept quiet for all these years and filed this petition after lapse of 9 years which is barred by limitation

U/Sec.2A(3) of Industrial Disputes Amendment Act, 2010. Petitioner was appointed in the respondents company as Badli Filler on 17-05-1991. Petitioner was irregular to his duties. According to Section 52(2) of the Mines Act, 1952 an underground employee is required to put in minimum musters of 190 and surface employee is expected to put in minimum of 240 musters. Petitioner was a chronic absentee, had put in only 68 musters in the year 2004. The following attendance particulars of the petitioner indicate the fact that the petitioner was not regular to his duties.

Sl.No.	Year	No. of musters.
1.	2001	144
2.	2002	109
3.	2003	121
4.	2004	68
5.	2005	22

During the period from January, 2004 to December, 2004, the petitioner had put in only 68 musters. As the above act amounted to misconduct under Standing Orders Clause No.25.25 of the company, the petitioner was charge sheeted. Petitioner participated in the enquiry proceedings and stated that due to ill-health, he could not attend his duties, he remained absent from duties and voluntarily accepted the charge levelled against him. The petitioner was paid all the terminal benefits after his dismissal i.e., Gratuity of Rs.83,650/-, CMPF of Rs.82,716/-, FBIS of Rs.2,190/- and (Pension of Rs.925/- per month). Enquiry officer submitted his unbiased report holding that the petitioner is guilty of misconduct under company standing orders.

5. Respondents company after considering the past record of the petitioner and on findings that there were no extenuating circumstances for taking a lenient view was constrained to dismiss the petitioner from service. The respondent's company conducted the enquiry proceedings duly in accordance with the principles of natural justice and law giving full opportunity to the petitioner who participated in the enquiry. Therefore, the respondents pray to dismiss the petition without granting any relief to the petitioner.

6. During the course of hearing, Ex.W-1 to Ex.W-3 and Ex.M-1 to Ex.M-7 are marked.

7. Counsel for the petitioner filed Memo U/Sec. 11-A of I.D., Act stating that he is not challenging the validity of domestic enquiry conducted by the respondent and prayed this Tribunal to decide the quantum of relief to which the petitioner is entitled.

8. Heard both sides. Perused the material papers on record.

9. Respondents have filed written arguments.

10. The point for consideration is:-

Whether the petitioner is entitled to be reinstated into service?

11. POINT:- The petitioner was appointed as Badli Filler on 17-5-1991. He never put in the required 190 musters in a calendar year. During the charge sheeted year of 2004, he had put in 68 musters only. The petitioner was issued charge sheet dt.18-5-2005 marked as Ex.M-1. It shows that he remained absent unauthorisedly and attended to duty only for 68 days during the year 2004. The petitioner did not offer any explanation to the charge sheet. In the enquiry proceedings under Ex.M-3, the petitioner admitted that from January, 2004 to December, 2004, he remained absent to his duty and pleaded that due to ill-health he was unable to attend for duty regularly. The enquiry report marked as Ex.M-4 shows that the charge levelled against the petitioner is proved. Petitioner was dismissed from service by order dt.24-5-2006 under Ex.M-6. After 9 years period, he raised the Industrial Dispute before this court assailing the dismissal order. The petitioner took all the terminal benefits from the respondents company. He is not diligent to raise the dispute and the delay in approaching this Tribunal is not properly explained. Further as can be seen from the record produced before this court, the petitioner was born in the year 1960 and being aware of his age, he should have approached this Tribunal soon after his dismissal from service. According to the counter averments, the petitioner could not be considered for reinstatement into the company as he did not fulfill the requirements laid down by the company regarding age and minimum number of musters during the previous years.

12. In view of the above discussion and the evidence placed before this court, this court is of the considered opinion that the punishment of dismissal from service imposed on the petitioner is justified; and there are no mitigating circumstances to interfere with the same. Therefore, I hold that this is not a fit case to exercise the discretionary powers vested U/Sec.11-A of ID Act. Under those circumstances, this petition is liable to be dismissed for want of merits. Accordingly, the petition is dismissed, but without any costs.

13. In the result, the petition is dismissed, but without any costs.

Typed to my dictation by Typist, corrected and pronounced by me in open Court, on this the 26th day of February, 2016.

G V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-

-Nil-

For Management:-

-Nil-

EXHIBITS**For workman:-**

Ex.W-1 Dt. 31-05-2010 Demand letter
 Ex.W-2 Dt. 03-05-1986 Office order appointment order as Badli Filler
 Ex.W-3 Dt. 28-04-2006 Removal letter from the rolls

For Management:-

Ex.M-1 Dt. 18-05-2005 Charge sheet with ack.,
 Ex.M-2 Dt. 06-01-2006 Enquiry notice
 Ex.M-3 Dt. 11-01-2006 Enquiry proceedings
 Ex.M-4 Dt. 17-01-2006 Enquiry report
 Ex.M-5 Dt. 18/19-1-2006 Show cause notice
 Ex.M-6 Dt. 25-04-2006 Dismissal order
 Ex.M-7 Dt. 02-09-2011 Circular for review of the cases of the workmen dismissed on the ground of absenteeism.

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 646.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 02/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/262/2007-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 646.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/262/2007-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL****PRESENT :**

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 02 OF 2008**PARTIES :**

The management of Girmint (R) Colliery, ECL

Vs.

Sri Brahamadeo Bhuiya

REPRESENTATIVES :

For the management : Sri P. K. Das, Ld. Advocate
 For the union (Workman) : None
 Industry : Coal State : West Bengal

Dated: 03.03.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/262/2007-IR(CM-II) dated 03.01.2008 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of M/s. ECL in denying employment to Shri Bradhamadeo Bhuiya husband of the deceased employee (Late Genia Bhuiya) is legal and justified? If not, to what relief is the dependent of the workman entitled?”

Having received the Order No. L-22012/262/2007-IR(CM-II) dated 03.01.2008 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 02 of 2008 was registered on 16.01.2008 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record I find that my predecessor (Late J. K. Sen, the then Presiding Officer) had reserved an award in this case because the workman is neither appearing nor taking any step since long. Several opportunities were given but to no effect. It seems that the workman is not at all interested to proceed with the case. Since the workman is not interested to proceed with the case I think it reasonable to close the case. As such the case is closed and a ‘No Dispute Award’ is hereby passed accordingly.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 647.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 41/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/46/2002-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 647.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Lacchipur Colliery, M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/46/2002-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT :

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 41 OF 2002

PARTIES :

The management of Lacchipur Colliery of M/s. ECL

Vs.

Sri Budhu Paswan

REPRESENTATIVES :

For the management : Sri P. K. Goswami, Ld.
Advocate

For the union : Sri S. K. Bandopadhyay,
(Workman) Ld. Advocate

Industry : Coal State : West Bengal

Dated: 09.03.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012 / 46/2002-IR(CM-II) dated 02.09.2002 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of management of Lacchipur Colliery under Kajora Area of M/s. Eastern Coalfields Limited in not accepting the date of birth in respect of Shri Bodhu Paswan, Onsetter as 03.02.1954 in place of 01.07.1942 is legal and justified? If not, to what relief is the workman entitled?”

1. Having received the Order No. L-22012/46/2002-IR(CM-II) dated 02.09.2002 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 41 of 2002 was registered on 27.09.2002. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Sri Bodhu Paswan has stated in his written statement that he was a permanent workman as Onsetter of Lachipur Colliery under Coal Mines Authority Limited and after change of name of the same Management now it is known as Eastern Coalfields Limited. Coal Mines Authority appointed Sri Bodhu Paswan in the year 1973. At that time photo Identity card was issued to the workman where date of birth was entered as 03.02.1954 duly signed by the competent authority of the management. Accordingly all records including Form “B” register as per Section 48 of the Mines Act, 1952 were maintained by the management and as such those records cannot be changed. Thereafter the said management converted the name of their establishments as Eastern Coalfields Limited from Coal Mines Authority to run coal mines smoothly. At that time the management of Lachipur Colliery have changed the year of birth of Sri Bodhu Paswan, Onsetter and mentioned his year of birth as 32 years in 1974 without information or knowledge of the workman, which is arbitrary and illegal. Sri Bodhu Paswan came to know from some source that on the basis of fictitious and false maintained records of management, Sri Bodhu Paswan may be superannuated from his service with effect from 01.07.2002 illegally.

3. He raised objection before the A.L.C(C), Raniganj. During conciliation proceeding one Mr. Rao, Dy. P M, Lachipur colliery called Sri Bodhu Paswan in his office on 15.12.2001 and has obtained L.T.I of Bodhu Paswan on Form “B” register of the colliery. Mr. Rao threatened the concerned workman to stop his duty with immediate effect if Bodhu Paswan refuses to put his L.T.I. on the register as desired by Mr. Rao, Dy. P.M. of Lachipur Colliery. Thus Bodhu Paswan was forced to put his L.T.I. on the “B”

Form register. Sri Bodhu Paswan being afraid for his duty was compelled to put his L.T.I. on the so-called record of the management. Bodhu Paswan lodged a G.D. at Andal P.S. on 17.12.2001 as G.D. Entry No. 815 dated 17.12.2001. Sri Bodhu Paswan sent copy of his diary to the A.L.C.(C) Raniganj, R.L.C.(C) Asansol, and Addl. S.P. Durgapur for their information. Due to adamant attitude of management, conciliation proceeding failed and Ministry referred this dispute for reference. He has been forcefully terminated from his service by the management with effect from 01.07.2002.

4. M/s. Eastern Coalfields Limited has filed written statement. It has been stated that Sri Bodhu Paswan was an employee designated as Onsetter posted at Lachhipur colliery. His date of birth/age was recorded in all official records including in the Form "B" register of the management as 32 years in the year 1974 and an appointment was recorded in February 1971. That on the basis of record his service has already been terminated on 01.07.2002. Mr. Kishore Chatterjee, the President of Union, National Coal Workers Congress raised a dispute which has come for adjudication. The management issued S.R.E. to concerned workman in the year 1987 informing all the dates entered into the Form "B" register. The concerned workman was aware about the data which was supplied through S.R.E. Mr. Paswan never raised any dispute during his service period; as such his service was duly terminated with effect from 01.07.2002. He is no more an employee of the M/s. Eastern Coalfields Limited. The present dispute is not maintainable. The workman is not entitled to any relief.

5. The workman has filed rejoinder written statement. In brief he has stated that written statement of employer is absolutely false, baseless and motivated, hence it is denied. The concerned workman requested several times before management for rectification of his date of birth which was wrongly recorded in the record of management. The workman has been illegally victimized and terminated from his service before 60 years of age. The date of birth of workman has been accepted as 03.02.1954 which has been recorded in photo identity card issued by the previous Coal Mines Authority Limited duly signed by the competent Officer. The concerned workman has been illegally terminated. The date of birth of Sri Bodhu Paswan has been accepted by C.M.A. Limited as 03.02.1954 which cannot be changed as per Mines Act. The workman has prayed that tribunal may kindly pass an order for reinstatement of Sri Bodhu Paswan, Onsetter of Lachhipur Colliery of M/s. Eastern Coalfields Limited with full back wages with all other legal dues with effect from 01.07.2002.

6. The workman has filed affidavit in his oral evidence. He has been cross examined by the learned Advocate of M/s. Eastern Coalfields Limited. M/s. Eastern Coalfields Limited has not filed any oral or documentary evidence.

7. The workman has also filed the following documents in support of his claim:-

- i. Photo identity Card issued by the "COAL MINES AUTHORITY LTD" towards Sri Bodhu Paswan of this instant case.
- ii. Dispute raised by the Workman/Union before the A.L.C.(C) Raniganj in connection with Non-recording of actual year of Birth in the Record of the Management of "EASTERN COALFIELDS LTD" Vide the Letter No of the Union Ref. NCWC/President,RC-ECL/ALC dated 03.09.2001.
- iii. General Diary No. 815 dated 17.12.01 has been Lodged by Sri Bodhu Paswan at Andal P.S in connection with Forceful obtaining his L.T.I. on Form 'B' Register by Mr. Rao Dy. P.M. Lachhipur Colliery.
- iv. The Union informed before the A.L.C.(C) Raniganj, R.L.C (C) Asansol, The Addl. Superintendent of Police, Durgapur vide letter Ref No. NCWC/President,RC-ECL/LC/2001 dated 18.12.2001 regarding forceful obtaining of L.T.I on the Records of Sri Bodhu Paswan by Mr. Rao, Dy. P.M Lachhipur Colliery.
- v. Sri Bodhu Paswan informed in writing before the Agent, Lachhipur colliery regarding Illegal and Forceful Termination of his service without any Notice with effect from 01.07.2002.
- vi. Letter from Sri Bodhu Paswan addressed to the Agent, Lachhipur Colliery under Registered post with A/D dated 13.02.2002.
- vii. Letter from Sri Bodhu Paswan addressed to the Agent, Lachhipur Colliery dated 16.08.2002.
- viii. Letter from Mr. Ranjit Roy, advocate, Kolkata High Court addressed to the Post Master, Kajoragram Sub-Post Office where he wanted to know actual date of receiving letter by Sri Bodhu Paswan from Kajoragram Post Office which was sent by the Manager of Lachhipur Colliery related with Superannuation Notice.
- ix. Reply from the Post Master of Kajoragram Post Office to the Advocate Kolkata High Court in response to his letter.

8. I have heard Sri S. K. Bandyopadhyay, Learned Advocate on behalf of workman and Sri P. K. Goswami, learned Advocate on behalf of M/s. Eastern Coalfields Limited.

9. Sri S. K. Bandyopadhyay has argued that the date of birth of Sri Bodhu Paswan before nationalization was recorded as 03.02.1954 in the record of Coal Mines Authority and this date of birth was recorded in his photo identity card. But after nationalization M/s. Eastern Coalfields Ltd suo moto has wrongly entered his date of birth as 01.07.1942 without intimation to the workman. His service has been

wrongly terminated and he ought to be continued from 01.07.2002 with all back wages and consequential benefits. Whereas the learned Advocate of M/s. Eastern Coalfields Limited has argued that the workman has not produced any documentary evidence regarding his age. As per record he has been rightfully terminated at the age of his superannuation. The workman very well aware about the fact of his date of birth recorded in the record of M/s. E.C.L. He has already informed in the year 1987 regarding his date of birth and other particulars of his service. But till retirement he never raised this fact before M/s. Eastern Coalfields Limited. The contention of workman is totally false.

10. The contention of workman is that his date of birth was recorded as 03.02.1954 at the time of joining his service in Coal Mines Authority. But after nationalization when new company M/s. Eastern Coalfields Limited was constituted his date of birth was wrongly entered. After raising dispute before A.L.C.(C), he was forcibly ordered to put his L.T.I. on official record of M/s. Eastern Coalfields Limited. He lodged F.I.R. to that effect which was registered as G.D No. 815 dated 17.12.2001. He has been wrongly terminated by M/s. Eastern Coalfields Limited on 01.07.2002 before his actual age of 60 years as described in the Model Standing Order. Whereas the contention of M/s. Eastern Coalfields Limited is that the concerned workman Sri Bodhu Paswan was issued S.R.E. in the year 1987 informing all the data recorded in the Form 'B'. The concerned workman was fully aware about his date of birth and all other relevant facts, but he never raised any dispute.

11. It is admitted fact that the concerned workman Sri Bodhu Paswan is an ex-employee of M/s. Eastern Coalfields Limited. It is also not disputed that his service was terminated by M/s. Eastern Coalfields Limited on 01.07.2002. Now the question arises for consideration is when the concerned workman was aware about his change of date of birth and when he raised the dispute. The concerned workman Sri Bodhu Paswan has filed copy of letter addressed to A.L.C.(C) dated 03.09.2001 and 18.12.2001. He has filed copy of his identity card as Ext-A. In this photo identity card his date of birth was recorded as 03.02.1954. His date of birth was changed by M/s. Eastern Coalfields Ltd in 1987. But he never raised any dispute or put his objection before M/s. Eastern Coalfields Ltd. In para-5 of the written statement of the concerned workman it has been stated that he came to know from some source that on the basis of fictitious and false maintained record of the management, Sri Paswan may be superannuated from his service with effect from 01.07.2002 illegally.

12. Sri Bodhu Paswan has not disclosed that on which particular date and from which source he came to know about his probable date of retirement. It appears that this fact has been concealed by the concerned workman. As per letter addressed to A.L.C., he raised the dispute before A.L.C. on 03.09.2001 just ten months prior to his retirement.

Though as per copy of photo identity card issued by M/s. Coal Mines Authority the date of birth is recorded as 03.02.1954. Sri Bodhu Paswan has stated in his cross-examination on page-2 that "I have no document with me in support of my date of birth as 03.02.1954." There is no basis for recording of his date of birth as 03.02.1954. Therefore if there was no basis for recording his age as 03.02.1954 then M/s. Eastern Coalfields Limited was solely justified to correct the date of birth under proper intimation to concerned workman. Even if for the sake of argument if it is assumed that M/s. Eastern Coalfields Limited has wrongly entered his date of birth then he ought to have raised this dispute at the first instance when he gained that knowledge. Without disclosing the date and source regarding his correction of date of birth, it cannot be assumed that the workman was aware only before ten months prior to his retirement. Whereas the allegation of M/s. Eastern Coalfields Limited in their written statement is that the concerned workman was informed about his date of birth in 1987. So if the concerned workman was informed in 1987 then Sri Bodhu Paswan ought to have raised this dispute in 1987. But being aware of his date of birth he raised this dispute in September, 2001 just ten months prior to his retirement. This circumstance does not inspire confidence. It is settled law that the date of birth, as recorded in the service book cannot be changed after a long period particularly at the fag end or nearer to the date of retirement or superannuation.

13. The Hon'ble Apex Court in State of U.P. & Anr. v/s Shiv Narain Upadhyaya (2005) 6 SCC 49 reported in A.I.R. 2005 SC 4192 has held that the date of birth as recorded in the Service Book cannot be changed after a long period, particularly at the fag end or nearer to the date of retirement or superannuation. . This view has been reiterated by Hon'ble Supreme Court in Registrar General, High Court of Madras v/s M. Manickam and others (2011) 9 SCC 245: reported in A.I.R. 2011 SC 3658.

14. In view of the law laid down by Hon'ble Apex court since Sri Bodhu Paswan has raises the dispute of his age at the fag end of his retirement being very well aware of this fact cannot be accepted.

15. Considering the whole facts and circumstances, discussed above, I come to the conclusion that the action of the management of Lachipur Colliery under Kajora Area of M/s. Eastern Coalfields Limited in not accepting the date of birth in respect of Sri Bodhu Paswan, Onsetter as 03.02.1954 in place of 01.07.1942 is legal and justified. The workman is not entitled to any relief.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 648—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 51/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/59/2009-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 648.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Northern Coalfields Limited and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/59/2009-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE SRI SHUBHENDRA KUMAR, HJS,
PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOR COURT, KANPUR**

Industrial Dispute No. 51 of 2010

Between-

Sri Surendra Nath Singh, Secretary,
(in relation to Shanker Lal)
Koyna Udyog Kamgar Sangathan,
Branch Office B 49
NCL Khadia Project,
Sonebhadra.

And

The Chief General Manager (P),
Northern Coalfield Limited,
Head Quarter,
Singrauli, (M.P.)

AWARD

1. Central Government by notification No.L-22012/59/2009-IR(CM-II) dated 31.05.2010, has referred the following dispute for adjudication to this tribunal-

2. Whether the demand of the Union that the workman Sri Shanker Lal Fitter working at NCL Khadia be given promotion from the date of DPC is legal and justified? To what relief is the workman entitled for?

3. The instant case has been raised by the union working under the opposite party on behalf of Sri Shanker Lal alleging that the worker was appointed as Craftsman Trainee on 16.2.91 and his work and conduct always remained commendable and he was never issued either any warning or charge sheet. Considering his efficiency and good behavior he was granted promotion at the Post of Machanic Fitter Gr.1 to Gr.9th and in this category he is working since 2003. There is orders in the opposite party that for promotion employee has to appear for interview before DPC and if he qualifies then he will be given promotion from the date of DPC. It is lastly alleged that had he been given promotion from the date of DPC i.e. 20.11.97 he would have been given further promotion and would have also become entitled for revised pay scale and since it was not done in the case of the worker, his juniors became senior to him.

4. In this way it is claimed by the union that the worker would be deemed to have been promoted from the date of holding of DPC i.e. 20.11.97 and he be allowed difference of salary and allowances.

5. The claim of the worker is contested by the opposite party on the ground that as per circular dated 12.12.97 the effective date of promotion would be the date on which the incumbent joins the higher post hence the claim of the worker is denied. It is admitted by the opposite party that the worker was promoted as Helper Cat.2 from the post of Craftsman Trainee Cat-1 and thereafter he was promoted Mechanical Cat.4, thereafter to category 5 and lastly to category 6 as per vacancy and directives of Coal India Limited. The reference produced by worker regarding promotion of other employees in the case of other project, while the vacancy seniority etc. of each project are different, hence the alleged reference of different projects are not applicable in the case of the worker. The facilities and benefits has rightly been provided to the worker from 21.1.98 in compliance of circular dated 12.12.97.

6. On the basis of above the management has denied the claim of the worker in its entirety alleging that he is not entitled for the relief claimed by him.

7. The Union along with his claim petition has filed paper no. 7/6-13 and also filed documents paper no. 6/6-15. Again vide list dated 21.7.15 worker has filed 10 documents. In support of his case worker has also filed his affidavit.

8. Management has not filed any document in support of its claim.

9. Neither the union nor the worker is attending the proceedings of the case for last several dates therefore, it is clear that the union is not interested in prosecuting his case.

10. None of the parties have adduced oral evidence and worker also failed to prove the documents filed by him in support of his case by adducing cogent evidence.

11. Therefore, from the records of the case it is quite clear that it is a case of no evidence. Under the facts and circumstances of the case the tribunal is of the view that the reference is bound to be decided against the union / worker for want of proof.

12. Accordingly it is held that the worker is not entitled for any relief as claimed by him for want of proof. Reference is answered against the union / worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 649.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 63/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/11/2010-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 649.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Northern Coalfields Limited and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/11/2010-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE SRI SHUBHENDRA KUMAR, HJS,
PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOR COURT, KANPUR**

Industrial Dispute No. 63 of 2010

The Regional Secretary,
Koyna Shramik Sabha,
IC 42, PO Singrauli,
Sidhi (M.P.).

And

The Chief General Manager,
Northern Coal Field Limited,
Khadia Project,
Sonebhadra U.P.

AWARD

1. Central Government, Mol, New Delhi vide notification No.L-22012/11/2010-IR(CM-II) dated 29.07.2010, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of NCL Khadia Project Distt. Sonebhadra in not considering the case of Sri A K Dwivedi for promotion and seniority is just fair and legal? To what relief is the workman concerned entitled for?

3. In brief the case of the worker as set up by the union raising the present dispute is that the worker was appointed under the opposite party at the post of electrician category 1 craftsman training. Considering his satisfactory service, he was given promotion from time to time by the management and as such for the first time he was promoted at the post of EPH Gr.1 in 1990 and was further given promotion as Grade D, Grade C with effect from 1.1.2000 and 1.09.06 respectively and at present worker is working as electrician grade B. It is further alleged that his some colleagues were given promotion without holding DPC with effect from 10.6.05 ignoring the claim of the worker. Therefore, the worker has claimed his promotion at the same post on which his juniors were promoted with effect from 10.6.05 instead of 01.09.06 when he was given promotion at par to his juniors.

4. The management filed written statement denying the claim of the worker on a number of grounds interalia stating that the reference order suffers from delay and latches inasmuch as the cause of action is of date 10.06.05 whereas the dispute has been raised after lapse of 5 years hence reference is not maintainable. Worker is not entitled for any relief as no cause of action accrued in his favor on any date whatsoever. In fact promotion letter is issued to Sri A K Dwivedi late as he had submitted the wireman permit late to the management and after submission of wireman permit his case was considered by DPC held on 12.08.06 and accordingly he was promoted to EP Electrician Grade 1 with effect from 01.09.06. Worker is not entitled for promotion with effect from 10.6.05 nor he is entitled for any arrears as alleged by him.

5. On the basis of above it has been prayed that the claim of the worker is devoid of merit and is liable to be rejected.

6. After exchange of pleadings between the parties both sides have filed documents.

7. Neither the worker nor the union raising the dispute appeared in the case for the last several dates despite providing sufficient opportunity through registered post, therefore, on 5.1.16 representative for the management made an endorsement on the order sheet that since the worker has not adduced any evidence, they will also not adduce any evidence in the case.

8. Therefore, from the above, it is quite clear that it is a case of no evidence and the tribunal is of the opinion that the union/worker has failed to substantiate their claim by adducing cogent and relevant evidence in support of their claim.

9. Accordingly, I am of the view that the reference is bound to be answered against the union / worker for want of proof and evidence holding that the worker is not entitled for any relief as claimed by him pursuant to the present reference order.

10. Reference is answered accordingly in favor of the management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 650 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 43/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/330/1997-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 650 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/330/1997-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE SRI SHUBHENDRA KUMAR, HJS,
PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOR COURT, KANPUR**

Industrial Dispute No. 43 of 98

In the matter of dispute between—

The Chief General Secretary,
Bhartiya Khan Mazdoor Sangh,
P.O. -Pathakhera,
District- Betul (MP).

And

General Manager,
WCL,
Pathakhera,
Betul (MP).

AWARD

1. Central Government, Mol, New Delhi vide notification No. L-22012/330/97/IR (CM-II) dated 22.07.98, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of Chief Manager, WCL in terminating the services of Sri Trilok Chand w.e.f. 20.06.96 is justified? If not, to what relief is the workman entitled?

3. In short the case of the workman as set up by the Union raising the dispute is that worker was appointed on 09.10.73, at Regional Workshop of WCL, of Pathakhera area at the post of Heavy vehicle driver in grade 'c' under the control of opposite party. The work and conduct of the worker remained loyal faithful and unblemished. Worker was placed under suspension vide order dated 01.09.95 stating therein that charge sheet will be issued separately. He was issued charge sheet dated 05.09.95 to which the worker submitted his reply on 11.09.95 and 20.09.95 wherein he denied the charges by stating correct and true facts. After going through the reply to the charge sheet the opposite party decided to hold departmental inquiry against the worker by order dated 22.09.95 and Sri S K Gupta Engineer of Shobhapur common services as enquiry officer. During the inquiry the allegation of misconduct as well as charges could not be established and the witnesses produced by the prosecution did not support the allegations brought against the workman and the management failed to establish the charges brought against the workman.

4. It is further pleaded by the worker that despite the fact that the workman was not found guilty of charges of misconduct as per documentary and oral evidence lead before enquiry officer, the enquiry officer gave his finding against the worker. Thus the finding of the enquiry officer is perverse and the enquiry finding is vague, ambiguous and suffering from mala fide and prejudicial intention of the enquiry officer. Based on the report of the enquiry officer, the Manager of Regional Workshop of WCL Pathakhera passed order of termination from service vide order dated 20.06.96 in arbitrary, malafide, illegal and capricious manner. The authority to appoint Heavy Vehicle Driver is the General Manager and the order terminating the services of the workman was issued by Manager, Regional Workshop Pathakhera. It is also pleaded that according to the settled legal position an authority below the rank of an appointing authority is not empowered to pass punishment order, therefore, the order terminating the services of the workman is beyond the jurisdiction of the authority passing the termination order. Likewise manager of Regional Workshop of WCL Pathakhera was

not competent to issue charge sheet to the worker. Lastly it is alleged that as per the charge sheet the assistant Chief Security Officer, Mr. A. Mathew, Chief Security Officer, Mahendra Singh and Bharat Singh Security Guards were the co accused of such matter as per charge sheet. It is quite clear that they were equally participated in such type of conduct. At any rate it is very strange that both of the security guards and Assistant Security Officer are smoothly working with the opposite party and the only concerned worker of the above noted case is awarded the major punishment i.e. termination from service. Appeal preferred by the worker did not find favor at the hands of the appellate authority.

5. On the basis of above pleadings it is prayed that the order of punishment be set aside being illegal and malafide and the workman is entitled to be reinstated in the service of the opposite party with full back wages, continuity of service and with all consequential benefits.

6. Opposite party denied the claim of the worker on a number of grounds viz; considering the complaint against the worker he was placed under suspension prior to issue of charge sheet; that the explosive van was driven by Sri Trilok Chand and he carried the wooden planks unauthorisedly in the explosive van in contravention of the provisions of law and no other material except explosive can be carried in the explosive van as per the extent rules; the explosive van in question seized by the Forest Department was in the custody of said department for several month and this caused heavy financial loss to the management; considering the reply to the charge sheet given by the workman a departmental inquiry was ordered against him by the management; the enquiry officer conducted the inquiry strictly in accordance with the rules of natural justice; full fair and reasonable opportunity was given to the worker to prove his innocence but he failed to do so and the article of charges were found proved; the enquiry officer submitted his report dated 17.04.96 to the competent disciplinary authority who after going through the report passed the punishment order dt. 20.06.96 terminating the services of the workman after obtaining the approval of the competent authority; the appeal preferred by the worker was also dismissed by the appellate authority; it is denied that any prejudice has been caused to the worker during conduct of inquiry; it is also denied that inquiry report suffers from infirmity; Charges were found proved in the inquiry; the worker was given full opportunity of his defense by the inquiry officer; punishment awarded to the worker on the basis of proved misconduct which are grave in nature fully commensurate with the proved misconduct.

7. I would like to mention here that the opposite party has filed a very lengthy written statement running into 248 paragraphs, therefore, only facts touching the merit of the case has been mentioned and rest is ignored.

8. On the basis of pleadings it has been prayed by the opposite party that the claim of the worker is liable to be rejected being devoid of merit.

9. Worker has also filed rejoinder but nothing new therein has been stated except reiterating the facts already pleaded in the claim petition.

10. On 25.09.2000, my learned predecessor had framed preliminary issue regarding fairness of domestic inquiry and fixed date for arguments on preliminary issue and thereafter, on 19.05.2003 fixed 28.07.03 for evidence of parties. On 28.07.2003 worker was debarred from adducing evidence as he did not turn up on that date. The worker moved application for recalling the order which was rejected by my learned predecessor on 27.05.2004. These both the order dated 28.07.03 and 27.05.04 were challenged by worker before Hon'ble High Court in writ petition No.25162 of 06 Sri Trilok Chand versus Union of India wherein Hon'ble High Court vide order dated 10.05.06 directed this tribal not to pass final award. Meanwhile management produced M.W.1 Sri PK Ganguly on 1.9.04, M.W.2 Sri Sunil Kumar Gupta on 01.09.04 and M.W.3 Sri P Balakrishnan Pillai on 15.12.04. The writ filed by the worker as above was finally disposed of by Hon'ble High Court on 03.09.14 in which order of the tribunal dated 28.07.03 and 27.05.2004 were set aside and this court was directed to proceed to decide the preliminary issue after giving opportunity to both the parties to lead evidence. It is further directed that the evidence led by the management shall be taken into consideration.

11. In compliance of order of the Hon'ble High Court, management was directed to produce M.W.1 and M.W.2 for cross examination as M.W.3 has already been cross-examined, but authorized representative for the management has moved an application showing his inability to produce M.W.1 and M.W.3 and moved application for discharging M.W.1 and M.W.3 which was allowed and cross-examination of M.W.2 Sri Sunil Kumar Gupta was conducted. There appears no need of summoning M.W.1 Sri P Balakrishnan Pillai as he was earlier cross examined by worker.

12. In rebuttal worker Trilok Chand has examined himself as w.w.1.

13. At the time of hearing of preliminary issue relating to fairness of domestic inquiry worker has admitted that inquiry conducted against him was fair and proper and as there appears no procedural defect in the domestic inquiry, the domestic inquiry was held to be fair and proper.

14. I have heard the arguments of both the parties at length and have also perused the whole record carefully.

15. Learned representative for the workman contended that the worker had not carried scooter no. MH-31-4239 and 97 wooden sleepers of his own, but he was forcefully pressurized by In-charge Security Officer of the opposite party to carry the articles from the house of Security Officer

and the articles were loaded in explosive van on his directions which were not checked by the security at the main exit gate of the company. He has only carried out the orders of his superiors under pressure who are actually responsible for taking illegal act from the worker under duress.

16. Learned representative for the management contended that the worker was the driver of the explosive van who is directly responsible for carrying scooter and wooden sleeper in the explosive van to which he was not authorized.

17. On perusal of domestic inquiry file at page 27/42 it appears that Sri Solekar has stated that Assistant Chief Security Officer Sri Mathew has directed him on 28.08.95 at 6.00 p.m. at his residence that he is going on leave for 2 or three days and whenever Mahendra demand any person you give him one person. He further deposed that in the absence of Sri Mathew he was in-charge of security. He further admitted that in Patakhera Area there are two check posts where vehicles are checked and they are under his charge. He has shown his ignorance why explosive van No. MOB-9939 was not checked in check post. He further admitted that Mr. Mathew Assistant Security Officer has given orders in writing to worker Trilok Chandra that explosive van No. MOB 9939 be not checked in the way of check post. He further deposed that he has not given direction to Trilok Chandra to load wooden sleepers in the van. He does not know whether any orders were given by Mr. Mathew or not.

18. From the evidence given by Sri Solekar who was in-charge Security Officer, it is clear that Mr. Mathew while proceeding on leave has directed him to give one person to Mahendra Singh on demand and Mr. Mathew has given order in writing not to check the explosive van at the check posts.

19. Sri Trilok Chandra concerned worker at page 27/56 has stated that on 31.08.95 when he took out explosive van it was not empty. He was called by Mr. Solekar who gave him gate pass of 76 sleepers in the name of ACSO and also given him letter mentioning that vehicle should not be stopped in sensitive places and lock of the van should not be opened. He further deposed that Mr. Mathew asked him a day before to carry out some luggage in the van and when he refused, he was asked to carry out wooden sleepers from the residence of Mr. Mathew. He further deposed that on the direction of Sri Solekar took the van at the residence of Mr. Mathew, where two security guards Bharat Singh and Mahendra Singh were standing.

20. This fact was admitted by witness Bharat Singh who stated that on 31.08.95 he was on rest. At about 10.30 a.m. Sri Mahendra Singh came and told him that Mr. Solekar has called you. Then he met Mr. Solekar who asked them to load packing luggage and scooter in the explosive van from the residence of Mr. Mathew and asked them to go to Nagpur

after loading the luggage. He further told him that he is sending Trilok Chandra with explosive van. When he asked what articles are to be loaded, he told him that packed articles are to be loaded from the residence of Mr. Mathew and at about 12.30 Sri Trilok Chandra came with the and they loaded the articles and scooter from the residence of Mr. Mathew.

21. At about 3.30 p.m. Trilok Chandra came to Shobhapur bus stop with the van and they all sat in the van for Nagpur. He further admitted that he was directed by Mr. Solekar to load the articles and scooter.

22. The case of the worker is further supported by witness Mahendra Singh who was examined in the inquiry who stated on 31.08.95, he went to the office of security where Mr. Solekar asked him that Trilok Chandra is also coming and directed him to load packing articles and scooter no. MH-31-4239 in the explosive van from the residence of Mr. Mathew and asked him to take the help of Bharat Singh. At about 12.30 p.m. Bharat Singh also came at the residence of Mr. Mathew and Trilok Chandra concerned worker came with the explosive van where both loaded packed pieces of wooden sleepers and scooter. He further admitted in the cross-examination that they were going on explosive van by order of Mr. Solekar. He further says that Trilok Chandra has not loaded any article. Sri Solekar gave 2-4 thousand rupees.

23. Besides this management examined M.W.2 Sri Sunil Kumar Gupta, before the tribunal who has stated in cross examination that he does not know about the scooter mentioned in the charge sheet. He further stated that if any vehicles goes out or enters in Western Coal Field it is checked by security. He has only submitted the inquiry report to the competent authority.

24. Worker Trilok Chandra examined himself as w.w.1. He stated in his examination in chief that he was working as driver of explosive van of the company. He had to go to Bandhara to take detonator on 31.08.95. Meanwhile his security chief Mr. Mathew asked him to take wooden sleepers and scooter from the residence which were loaded in explosive van by Mahender Singh and Bharat Singh. They asked him to carry out the loaded articles to the office of Coal India Nagpur which belong to Mr. Mathew. He admitted the fact that his van used to be checked at check post while van exit from the company and on its return.

25. This check post was under the Security Chief Mr. Mathew on 31.08.95 and when he cross the check post his van was not checked and both the guards Mahender Singh and Bharat Singh were in his van. When he reached near Gora Dongari Check post, he was asked by the Forest Department to open the lock of the van and when he refused guard Bharat Singh was sent to Patakhera where after Mr. Solekar Assistant Chief Security Officer of Mr. Mathew came with the key and opened the lock of the van then it was found that wooden sleepers were side the van and

then the van was ceased by the Forest Department. He informed the matter to the senior officers of the company where after both the guards, conductor and he was placed under suspension and charge sheet was given. After inquiry suspension orders of all of them was revoked and they were allowed to resume their duties and thereafter after three months the services of the worker were terminated and no action was taken against other three persons. Thereafter he attained the age of superannuation and retired from the service. He further stated that he had taken the articles in the van on the directions of Mr Mathew Chief Security Officer and he could not refuse the directions given by his superior and on their directions Bharat Singh and Mahender Singh loaded the items in the explosive van.

26. In his cross-examination he stated that he was not given any written order to load the item in the van. He further admitted that no other items can be loaded in the explosive van except detonator. He further deposed that when Mr. Mathew asked him to load the articles he refused. Mr. Mathew told him that this vehicle is under him and he is the Security Officer and you have to take these articles in van and he is giving two security guards who will also go with you.

27. From the above discussion it is clear that Trilok Chandra driver of the explosive van on 31.08.95 was given direction to load wooden sleepers and scooter from the residence of Mr. Mathew. It has further come in evidence that Mr. Mathew was on leave on 31.08.95 and his assistant Mr. Solekar in-charge security officer, with the help of two security guards Mahendra Singh and Bharat Singh got loaded wooden sleepers and scooter in the explosive van from the residence of Mr. Mathew and gave the some money and a slip ensuring that the vehicle should not be checked at the check post and the vehicle through security check post within its checking and it was detained at the Forest Check Post by Forest Department.

28. As the worker Trilok Chand himself admitted in his cross examination that no other article can be loaded in the explosive van, it is proved wooden sleeper and scooter were found loaded in explosive van. Therefore, charges leveled against the worker Trilok Chandra is found proved for carrying wooden sleeper and scooter in explosive van which he was not authorized under the Certified Standing Order and Mines Act provisions of which are applicable on the employees of Western Coal Field.

29. From the evidence recorded in domestic inquiry it is very much clear that not only the worker was responsible for load wooden sleeper and scooter in explosive van from the residence of Mr. Mathew, but those articles were loaded on the directions of Mr. Mathew who proceeded on leave on 31.08.95 and his Assistant Mr. Solekar directed worker to load these articles and provided help of two other security guards by name Mahender Singh and Bharat Singh

who got loaded the articles from the residence of Mr. Mathew in the presence and direction of Mr. Solekar, Assistant Security Officer. Mr. Solekar also gave them slip that van will not be checked at security check posts and also gave them some money.

30. Therefore, the provisions of Certified Standing Orders are applicable equally on all the employees of Western Coal Field including Mr. Mathew, Chief Security Officer, Mr. Solekar, Assistant Security Officer and other security personnel.

31. It also appears that by suspending all the four person sitting on the vehicle, management has only taken action against the worker Trilok Chand by revoking suspension order against all the four persons and thereafter terminating the services of the worker after three months.

32. As Mr. Mathew, Chief Security Officer and Mr. Solekar, Assistant Security Officer of the company are also responsible of illegal act, there should be a separate inquiry against these two officers who deliberately and knowingly the fact that no other item except detonator can be loaded in the explosive van forced the poor worker Trilok Chand to carry out their illegal orders and action.

33. Management could not show any document to establish that except worker any other armed guard and officers named above are punished.

34. Considering to the above evidence and circumstances of the case, I am of the considered view that it is a fit case where the tribunal can exercise its jurisdiction under section 11-A of Industrial Disputes Act, 1947, which clearly empowers the Industrial Tribunal to interfere with the punishment order passed by the management in the nature of dismissal, termination or discharge from service on proved misconduct, if it is found by the tribunal that the punishment order is discriminatory or by way of colorable use of managerial power or is shockingly disproportionate considering the gravity of charges.

35. As worker Trilok Chand has been held guilty of the charges, in my view he should have raised his hands in denying not to follow illegal orders of his superiors or he should have reported the matter to the General Manager of the Company or other higher officers. Therefore, he is also found negligent in discharge of his duties.

36. In the present case as discussed above, it has been found that no disciplinary actions have been taken against the two responsible security officer of the company against whom the same charge were found to be proved and the management has not taken any action nor punished both the security guards Mahender Singh and Bharat Singh who loaded wooden sleepers and scooter in the explosive van on 31.08.95 from the residence of Mr. Mathew, Chief Security Officer, of the Company, therefore, punishment of economic death of the worker in the name of termination of service cannot be allowed to sustain and therefore, it is

modified up to the extent of withholding of three increments permanently instead of termination from service as awarded to the worker.

37. As it has been submitted by the representative for the worker that the worker attained the age of 60 years during the pendency of this dispute, therefore, ordering reinstatement of the worker in the service is not possible and accordingly in lieu of reinstatement, tribunal is giving following directions-

1. Worker will be deemed as if he was never terminated from the service of the management.
2. Management is directed to withhold his three increments permanently for his proved misconduct.
3. Management is further directed to pay the entire arrears of his salary from the date of his removal till the date of his retirement taking into consideration the revision of pay from time to time.
4. To make payment of pension if admissible under rules and arrears thereof.
5. Any other consequential benefits attached with the post should also be allowed to the worker.

38. Reference is answered in the above terms in favor of the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 651.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 51/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/59/2007-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 651 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/59/2007-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOR COURT, KANPUR

Industrial Dispute No. 51 of 2007

Between-

The General Secretary,
Bhartiya Khadya Nigam
Mazdoor Sangathan,
47, Block Shiv Katra,
Krishna Nagar,
GT. Road,
Kanpur

AND

The Sr. Regional Manager,
Food Corporation of India,
3-C/T-V Vibhuti Khand,
Gomti Nagar,
Lucknow

AWARD

1. Central Government, Mol, New Delhi, vide notification no.L-22012/59/2007-IR(CM-II) dated 18.09.07, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of Food Corporation of India, in not correcting the date of birth of Sri Umesh Paswan as 01.10.56 instead of 01.10.50 is legal and justified? If not, to what relief is the workman entitled?

3. The case of the union on behalf of the worker is that the worker at the time of joining the services under the opposite party, recorded his date of birth as 01.11.56, but with malafide intention the opposite party by making interpolation in the date of birth got it recorded as 01.11.50 which is a glaring example of unfair labor practice. It is further alleged that the form which was forwarded to the Provident Fund Office by the opposite party his date of birth is recorded as 01.10.56. It is also pleaded by the union that in the history record of the worker against the column of date of birth, by making over writing in his date of birth it was made to read as 01.11.56 instead of 01.11.50. According to the provisions of certified standing orders one date of birth is recorded in the records of the opposite party and such records are in the sole possession over which the worker has no control. Lastly it is alleged that making change in the date of birth of the worker is unfair labor practice, illegal, unnatural, against principles of natural justice therefore, it is prayed that by declaring the entire action of the opposite party as illegal his date of birth be treated as 01.10.56 by issuing appropriate directions to the opposite party.

4. The opposite party denied the entire claim of the worker in its entirety by alleging that the worker got his date of birth entered at the time of appointment as 01.11.56 and it is also false to allege that the opposite party No.1 and 2 maliciously or malafidely interpolated the date of birth of the worker as 01.11.50 in place 01.10.56. The worker himself is not sure about his actual date of birth, so much so, that at one place, it is alleged that the date of birth of worker entered is 01.10.56 at the time of appointment, while at other place date of birth has been changed as 01.10.56. It is further alleged by the opposite party that it seems that the date of birth in the returns submitted to the Provident Fund Office has been inadvertently wrongly written. It is to be mentioned that Provident Fund returns submitted to the Provident Fund office are later process and there are chances of committing mistake. But the original record has to be seen and the worker cannot take any advantage of the said typing error and according to the Standing Order once the date of birth is recorded and entered in the service record of the establishment, the sole evidence of his age in relation to all his matter relating his service including fixation of his date of retirement from the establishment and all formalities regarding recording the date of birth shall be finalized with three months of the appointment of the worker. It is also provided in the standing order that in case where the date of birth of any workman had already been decided on the date of these orders came into force i.e. 31.08.99, shall not be reopened. In the present case the workman was appointed in 1984 and his date of birth had been decided at that time. The matter cannot be reopened now. The workman has been sleeping over the matter from 1984 to 2001. Opposite party has also denied that interpolation or over writing in the record has been done malafidely by the opposite party. There was no motive or reason with the opposite party to change the date of birth of the workman. It seems that the workman in collusion with the office staff at Hapur got his date of birth changed to gain advantage by extension of the service period. The perusal of the original service record will show that in history card figure "10" in the column of month has been changed to "11" and figure "0" at the end of the column of years has been changed to "6". Further in the proforma submitted by the worker through Union containing his photo and other Bio-data is also in the custody of Hapur Depot where the worker was originally appointed also contain the date of birth as 01.11.50 which has also been got changed in collusion with the staff as 01.10.56 and a close scrutiny by microscope would show the difference in the ink of the original writing and over writing. The worker is relying on nomination form an Provident fund and return form which have been wrongly typed by over sight and the worker cannot take any advantage of the said return. The claimant has not filed any document in support of his date of birth nor has any medical evidence been given when the dispute was raised and in this connection the worker had ample

opportunity. It is admitted by the opposite party that original records remain in the custody of the opposite party but at the same time there is always scope for the worker to approach and collude with the staff in getting the date of birth changed. The opposite party denied having committed any unfair labor practice in the case of the worker.

5. By way of additional plea it is alleged by the opposite party that in the register date of birth of the worker is entered as 01.11.50 at serial no.120 and this register was maintained at Hapur Depot of FCI. Accordingly date of retirement was also recorded as 01.11.08, as at that time the retirement age was 58 years. Fortunately the workman could not reach that Bio-data register and could not get any manipulation. A list of workers containing the entire Bio-data was sent on 19.09.93 by District Manager FCI, Hapur by Asstt. Manager (Labor) FSD Hapur. A copy of this Bio-data was also sent to District Manager, FCI, Kanpur on 09.01.2001 and the name of the worker is at serial No.118 and date of birth of the worker is recorded as 01.10.50 on the basis of original card signed by the representative of FCI Workers Union. The worker was very well aware of his recorded date of birth since very beginning but he had been sleeping over the matter and it was only in 2001 when he was on the verge of retirement that he sought to get his date of birth changed and in his efforts he any how managed to get changed the date of birth and succeeded in getting the over writing done. Therefore his effort for correction of the date of birth is malafide in order to have wrongful gain by extension of period of service by 6 years.

6. The present matter of the correction of age is not an industrial dispute and is a personal right regarding the terms of the contract of the service, therefore, union cannot take up this matter in the present manner.

7. Lastly it is stated that in view of the circumstances the petition is liable to be rejected.

8. The worker with his claim statement has filed paper bearing no.4/4-7. The opposite party vide list of documents dated 23.10.08 has filed 5 documents. Again worker vide list of document dated 10.05.10 has filed 3 documents. All these documents filed by both the parties are photocopies.

9. Worker vide application dated 14.09.11 has filed carbon copy of the employees family pension scheme declaration form.

10. The opposite parties along with evidence on affidavit of Sri Prem Chandra have also filed certain documents out of which some are in original and some are photocopies, relevancy of these documents will be examined at appropriate stage.

11. Worker with his affidavit has also filed photocopies of certain documents which will also be examined at appropriate stage.

12. On behalf of the Union one Tarni Kumar Paswan examined himself as w.w.1 and worker examined himself as w.w.2. On the other hand on behalf of the management one Sri Prem Chand was examined as M.W.1.

13. Tarni Kumar Paswan w.w.1 has simply stated about the union and nothing has been stated by him regarding merit of the case.

14. W.W.2 worker Umesh Paswan in his evidence has stated that at the time of appointment he has filled date of birth as 1.10.56 on the application form and the same is in the records of PF Office. But in his cross examination he has admitted that there is cutting in the date of birth in his form and history card wherein at place "0" figure "6" is written by over writing. He was transferred from Hapur to Kanpur. In the list of labors prepared by the department at Hapur, he does not know that his date of birth is 1.10.50 and in other papers also his date of retirement is written 31.10.08/1.11.08. He has filed a paper of Provident Fund which is paper no.4/6 wherein his date of birth is mentioned as 1.10.56, which also bears his thumb impression. He has denied that this paper was prepared in connivance with other clerks of the department.

15. On behalf of management Sri Prem Chand M.W.1 has filed affidavit and stated that at the time of appointment of worker his date of birth was entered as 1.10.50 in history card which was tempered later on and 1.10.56 was written by over writing. In this regard in the list of labors filed by the department his date of birth is mentioned as 1.10.50 at serial no.120.

16. I have heard the arguments of the parties at length and have gone through the whole file carefully.

17. Annexure-1 is the application for allotment of CPF A/c number prepared by the department where date of birth of Umesh Paswan is written clearly as 1.10.50. Original History Card annexure 2 filed by M.W.2 and also admitted by w.w.2 wherein date of birth of the worker is mentioned as 1.10.50, but there appears some over writing at figure "0". Annexure 3 is proforma application form of worker dated 21.08.84 wherein it clearly appears that in figure date of birth is tempered in figure "6" is written by over writing by figure "0". It was held by Assistant Manager that actual date of birth of Umesh Paswan is 1.10.50 and over writing is done in his history card and bio-date. Annexure-6 is statement showing bio-date of departmental labors wherein at serial no.118 date of birth of the worker is mentioned as 1.10.50. Besides this paper no.25/7 is copy of register of department clearly establishes that date of retirement of Umesh Paswan is 31.10.08/1.11.08 and his date of birth is to be 1.11.50.

18. Worker has only placed reliance on paper no.24/2 which is carbon copy of declaration form of family pension scheme relating to worker wherein date of birth of worker is mentioned as 1.10.56. This paper is not admitted by the management and it is contended that it got prepared by

worker in connivance with other clerks. Besides this no reliance can be placed on this document as it is not very material document specially in the circumstances management has placed reliance on very material documents discussed above, which establishes the date of birth of worker to be 1.10.50.

19. There is another aspect of the matter that annexure 4 letter of Assistant Manager dated 06.1.2001 clearly states date of birth of worker to be 1.10.50 and annexure 6 the statement is dated 30.09.93 wherein the date of birth of Umesh Paswan at serial no.118 is mentioned as 01.10.50.

20. Despite these papers worker kept silent for years together and did not challenge these documents and at the verge of retirement he raised the issue thus there appears delay and latches on the part of the worker which makes the case of the worker very doubtful as to why he has not raised the issue within a reasonable period.

21. In view of above discussions, I find that the worker has palpably failed to establish his date of birth to be 1.10.56. Besides this his date of birth as proved from the records is to be 1.10.50.

22. Accordingly my answer to the reference order is that the action of the management in not correcting the date of birth of Sri Umesh Paswan as 1.10.56 instead of 01.10.50 is legal and justified. Therefore, worker cannot be granted any relief pursuant to the reference order.

23. Reference is answered accordingly against the worker/union and in favor of management.

SHUBHENDRA KUMAR, Presiding Officer
नई दिल्ली, 5 अप्रैल, 2016

का.आ. 652 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 64/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/13/2010-आईआर (सीएम-II)]
राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 652 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Northern Coalfields Limited and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/13/2010-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE SRI SHUBHENDRA KUMAR, HJS,
PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOR COURT, KANPUR**

Industrial Dispute No. 64 of 2010

Between-

The Secretary,
Koyla Udyog Kamgar Sanghthan,
Branch Office MQ 1, NCL Khadia Project,
Shakti Nagar,
Sonebhadhra

And

The General Manager,
Northern Coalfield Limited,
PO Singrauli,
Sindhi (M.P.)

AWARD

1. Central Government by notification no.L-22012/13/2010-IR(CM-II) dated 02.08.2010, has referred the following dispute for adjudication to this tribunal-
2. Whether the action of the management in issuing promotion order of claimant (Non Diploma Holder) later than the issuance of promotion order of Diploma Holders through the DPC of claimant were held earlier, is legal and justified? To what relief is the claimants entitled for?
3. In the instant case the statement of claim has been filed on behalf of 31 effected workers by the Secretary of the Sanghthan. The concerned workers are working at different projects situate at different places in U.P. and M.P. and service conditions of the workers are governed by the management. The concerned workers were appointed as non diploma holders and the promotion policies are decided through bipartite settlement from time to time. According to the promotion policy for granting promotions to the worker, management constitute DPC from time to time and the workers are selected and promoted on the basis of interview and considering the performance after preparing a list on the basis of seniority. Secretary has also filed a list of workers along with his affidavit and on the basis of that it has been alleged that the management held interview through DPC of the workers 29.10.01 to promote them as Foreman. It is further alleged that according to rules of promotion policy result of interview should be declared within a month from the date of interview and in case suitable incumbents could not be appointed and subsequently appointed then it will be presumed that they have been given promotion from the date of DPC held. But this policy have been violated by the employer and the concerned workers were not given promotion from the date DPC and interview held by the management.
4. The claim of the union has been resisted by the Union on a number of grounds interalia the person raising the dispute should prove that he is member and secretary of the union. Sri Ram Prakash one of the claimant amongst 31 workers was initially appointed as Craftsman Trainee Cat.1 electrician on 11.3.83 at Amlohri Project and later on transferred to Khadia Project and is still working there. He along with other 31 workers are non diploma holders who are working at different projects of the management. All of them have been promoted as Assistant Foreman Gr.B on 18.10.02 as per norms of the company. D.P.C. HQ Singrauli met on 1.10.01 and 3.10.02 to consider the cases of Assistant Foreman (E&M) Gr.C (non diploma holders) who have completed the prescribed cadre scheme for the promotion to the post of foreman (E&M) Gr.B and one other DPC met on 29.10.01 to consider the cases of Assistant Foreman Gr. C (Diploma Holders) who have completed the prescribed cadre scheme for the promotion to the post of Foreman (E&M) Gr. B. The assertion of the union that if promotion order not issued within one month from the date of interview the order should be effective from the date of interview is not correct as it has already been modified General Manager Manpower vide circular dated 14.06.93 and after the issue of promotion order dated 18.10.02 one another order dated 3/5.12.02 was issued by the General Manager in which national seniority of promotion given to all the 31 foreman (non diploma holder from 24.04.2002. Therefore, the case of the workers cannot be considered for promotion with the interview date hence there is no merit in the case and the industrial dispute is not maintainable and is liable to be rejected.
5. The union filed paper no.3/3-19 along with paper no.3/1-2. Sri Ram Gopal Gupta signatory of the claim petition along with his affidavit has filed a list of workers and again he filed list of 31 workers through paper no.8/1-2. Management also have filed certain documents with their reply.
6. Thereafter union stopped attending the proceedings of the case for the last several dates which leads to one and only one inference that union is not interested to prosecute its claim.
7. None of the parties have adduced oral as well as failed to prove documents filed in support of their respective cases by adducing cogent evidence.
8. Thus it is a case of no evidence. Under the facts and circumstances of the case the tribunal is of the view that the reference is bound to be decided against the union for want of proof.
9. Accordingly it is held that the union is not entitled for any relief as claimed by it for want of proof. Reference is answered accordingly against the union.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 653 .—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 64/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/68/2008-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 653 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Northern Coalfields Limited and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/68/2008-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE SRI SHUBHENDRA KUMAR, HJS,
PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOR COURT, KANPUR**

Industrial Dispute No. 64 of 08

Between-

The Secretary,
Bhartiya Koyla Khadan Shramik Sangh,
Joomde Bhawan, Sector B Colony,
Dudhchua District Sindhi (M.P.).

And

The Chief General Manager,
Northern Coalfield Limited,
Dudhchua Project,
Sonebhadra,
U.P.

AWARD

1. Central Government, Mol, New Delhi vide notification no. L-22012/68/2008-IR (CM-II) dated 26.08.08, has referred the following dispute for adjudication to this tribunal.

2. Whether the demand of Bhartiya Koyla Khadan Shramik Sangh for promotion of Sri TND Pandey in Grade.1 w.e.f. 04.07.92 followed by Senior Grade w.e.f. 4.07.95 and in special grade w.e.f. 4.07.95 is legal and justified? If so to what relief is the claimant entitled?

3. Case of the claimant in short is that he is worker in the above dispute and he has been denied his promotion on the post of Dumper Operator Gr.1 w.e.f. 04.07.92 as also he has been declared promoted w.e.f. 3.3.94 violating the promotion rules of Koyla Khadan Udyog in which it has been clearly mentioned that operator grade II who has completed his three years experience in this grade and in this connection it is clarified that the worker concerned was regularized on the post of dumper operator grade II with effect from 04.07.89 vide order dated 15.12.89. Accordingly the worker should have been promoted on the post of operator grade 1 on 4.7.92 in conformity with the promotion rules of the company. It is also alleged that other workers of the same category who were junior to the worker have been promoted prior to the promotion of the workman as such worker has been denied to his rightful claim of the pay scale equal to those who have been promoted earlier. According to promotion rules applicable to dumper operators clearly indicates that dumper operator grade 1 who has completed 3 years service shall be promoted on the post of senior dumper operator and since the worker has completed three years service on the post of operator grade 1 he should have been promoted to the post of senior dumper operator w.e.f. 4.7.95 whereas worker concerned has wrongly been promoted with effect from 5.5.98. Worker has been promoted to the post of dumper operator special grade with effect from 20.03.04 instead 04.07.98 on the basis of promotion rules applicable to him. Worker has also been denied the benefit of pay fixation in higher pay scale at the time of his promotion as such he has been deprived of benefit of Fundamental Rule 22(B), therefore all pay fixations which is to be done at the time of each promotion may be allowed one notional increment of his burlantive post and next stage in the scale of promotion post.

4. On the basis of above, the union has claimed that worker be deemed to have been promoted on the post of dumper operator grade 1 w.e.f. 4.07.92 followed by senior dumper operator with effect from 04.07.95 and senior dumper operator special grade 1 with effect from 04.07.98 with all benefits admissible to the post with effect from the dates of promotion and order the opposite party to pay arrears of the same along with suitable cost to the authorized representative.

5. The claim of the union has been refuted by the opposite party mainly on the ground that the reference order is bad in law. Promotion is the administrative function of the management and the union can have no say in such matters and it can be hardly disputed before any court of law or tribunal as also it is well settled law that promotion cannot be claimed as a matter of right. For promotion other factors such as work, conduct, merit, past records and seniority are also considered and since the work and conduct of the worker was not satisfactory hence the worker had not been considered for promotion from the date as

alleged in the reference order but he had been promoted later on when he became eligible as per the cadre scheme of the employer. Worker has committed serious misconduct on 21.09.99 and earlier also, he had been involved in certain other illegal activities and accordingly he was found habitual for committing misconduct and he had been charge sheeted earlier also along with charge sheet dated 7.10.99 and after due inquiry the services of the worker had been terminated vide order dated 22.09.99 and the worker has been reinstated in the service in compliance of order of the Hon'ble High Court passed on 01.10.99 and the matter is still sub-judice before the Hon'ble High Court, Allahabad, and in view of above reference order is bad in law and the worker is not entitled for promotion from the dates as alleged in the reference order. The employees are promoted from the post of Dumper Operator grade 2 to grade 1 after successful working of three years in present grade under the cadre scheme of the company and accordingly the service of Sri Pandey became regularized on the post of dumper operator grade 2 on 3.8.89. Work and conduct of Sri Pandey was not found satisfactory and he was found unfit for promotion by the competent authority as such, Sri Pandey committed a serious misconduct and a disciplinary proceedings became pending against the worker and he was warned but when the chance of Sri Pandey came his case for promotion had been considered by the departmental promotion committee and on the recommendation of the said committee Sri Pandey had been promoted on the post of dumper operator on 3.3.94 and the worker had again been promoted on the post of senior dumper operator on 5.5.98 on the recommendation of departmental promotion committee and under the same process he was promoted as dumper operator (special grade) on 20.03.04.

6. On the basis of above it is prayed that the worker is not entitled for any relief of promotion from the dates mentioned in the reference order and the claim of the worker is liable to be rejected.

7. Worker has also filed rejoinder but nothing new has been mentioned therein except reiterating the facts already pleaded in the claim petition.

8. Worker has examined himself as m.w.1 whereas management has examined its officer K Ravindra as M.W.1. Both parties have also filed documents which shall be discussed at the appropriate stage.

9. I have heard the arguments of both sides and have perused the records of the case.

10. In brief contention of worker is that he had been denied promotion on dumper operator grade 1 on 4.7.92 and wrongly promoted with effect from 3.3.94 violating promotion rules. His services were regularized on the post of dumper operator grade 2 with effect from 4.7.89 accordingly he should have been promoted on this post on 4.7.92. It is also alleged that after completion of three

years of service he should have been promoted to the post of senior dumper operator with effect from 4.7.95 whereas he has been given promotion on this post with effect from 5.5.98. It is further alleged that he had been promoted as dumper operator special grade 1 with effect from 20.03.04 instead 4.7.98. It is alleged that the promotion of the worker should be made every after 3 years according to promotion rules.

11. Briefly stated facts as set up by the management is that the worker has been given his due promotions s [per his entitlement according to promotion rules and there is no illegality or irregularity in the case of the worker in granting promotions at various levels as dumper operator. He had been awarded several adverse entries warning and charge sheets and even his services were terminated vide order dated 22.09.99 by the employer after following due disciplinary action as per rules of the company. Being aggrieved by this order the worker has filed writ petition no.22311 of 99 before Hon'ble High Court Allahabad ad a per interim stay order dated 1.10.93 worker has been reinstated. As the matter is still sub-judice the reference order is bad in law and secondly reference is bad as the present dispute raised is highly belated.

12. It is also contended by the employer that the worker has deliberately concealed the fact of his termination and his reinstatement on the basis of an interim order of the Hon'ble High Court and the matter is still sub judice and the worker has not come with clean hands before this tribunal hence he is not entitled for any sympathy in his favor. It is also contended by the representative for the management that had the above facts been brought in the knowledge of the conciliation officer by the union in that event appropriate government would not have referred the matter before this tribunal.

13. It is admitted to both the parties that the worker TND Pandey had been appointed as driver under the opposite party in the year 1986 and had been promoted as dumper operator grade 2 on 4.7.89. Management has also filed copy of certified standing orders of which paper no.7/15 provides that for promotion to the post of senior dumper operator special grade 1, senior dumper operator category A ad dumper operator grade 1, 10 years, 8 years and 5 years experience is required.

14. It is necessary to point out that no employee can claim promotion unless he attributes satisfactory service and promotion cannot be granted or claimed as a matter of right.

15. M.W.1 Sri K Ravindran, Dy. Manager Personnel NCL has stated on oath that TND Pandey has joined as driver on 20.06.86 and after having training he was regularized as dumper operator grade 2 on 3.8.89 and his promotion and his promotion was due after three years but due to misconduct of worker several times he was warned orally and in writing and was also given charge sheet and

therefore, he was promoted to dumper operator senior on 5.5.98 and thereafter as dumper operator special grade on 20.3.04. He has proved documents filed by the management regarding misconduct of worker which are paper nos 10/5, 10/8, 10/9, 10/12-13, 10/18-24, 10/27-28.

16. On perusal of these papers it appears that worker was given warning on 11.6.87 (paper no.10/5). His work was found below average in the period 19.7.86 to 18.7.87 (paper no.10/6), worker was awarded warning on 13.2.88 (paper no. 16/8), again warned on 3.6.89 (paper no.10/9), he was given charge sheet on 17.4.90 (paper no.10/12), warning letter (paper no.1013), letter issued to improve his working dated 6/19.10.90 (paper no. 10/16), he was found unfit for promotion by entry dated 21.09.90 (paper no.10/17), again given charge sheet dated 4.1.92 (paper no. 10/18), warning letter (paper no. 10/19), again given charge sheet dated 26.05.92 (paper no. 10/20), letter issued assessing his work to be unsatisfactory by letter dated 12.9.93 (paper no.10/21), given charge sheet on 4.12.92 (paper no. 10/23), again give charge sheet on 16.10.95 (paper no.10/24), again given charge sheet on 22.4.94 (paper no.10/28), again given charge sheet on 31.3.96 (paper no.10/31), letter issued to worker to operate dumper no. K-50 which is kept on his record dated 4.4.96 (paper no.10/33), warning letter dated 29.10.97 (paper no.10/35).

17. These are documents showing working of the worker to be unsatisfactory for several years. Even then his services were regularized as dumper operator grade 2 with effect from 4.7.89 by the letter dated 15.12.89 (paper no. 10/11) and the date of regularization was corrected with effect from 3.8.89 by order 24.5.90 and his scale is found to be revised which reveals that he was promoted to higher scale and thereafter he was promoted dumper operator grade A by letter dated 5.5.98 (paper no.10/36) and the worker was promoted to senior dumper operator special grade by order dated 20.3.04 (paper no. 10/46).

18. From the above discussions, I come to the conclusion that delay in promotion of worker TND Pandey was due to his bad antecedent as stated above and the demand of union for his promotion from the dates given in the reference order appears to be unjustified.

19. Moreover, the present dispute appears to have been raised at highly belated stage with concealments of material facts regarding his termination and his reinstatement in compliance of interim orders of the High Court.

20. With these observations the reference is decided against the union and in favor of the management.

Reference is answered accordingly.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 654 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनसीएल के

प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 74/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/91/2011-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 654 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of NCL Khadia Project and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/91/2011-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE SRI SHUBHENDRA KUMAR, HJS,
PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOR COURT, KANPUR**

Industrial Dispute No. 74 of 2011

Between-

Sri Chhatu Singh,
Regional Secretary Janta Mazdoor Sangh,
(In relation to worker Sri Amarjeet Singh)
Regional Office B-439, NCL Khadia,
District Sonebhadra
U. P.

And

The Chief General Manager,
NCL Khadia Project,
District Sonebhadra
U. P.

AWARD

1. Central Government, Mol, New Delhi vide notification no.L-22012/91/2011-IR(CM-II) dated 28.07.2011, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of Chief General Manager, NCL Khadia Project District Sonebhadra in refusing to amend the date of birth of Sri Amarjeet Singh, Drugline Operator as 5.5.56 in their records is just fair and legal? To what relief the workman is entitled to?

3. The case of the union as set by it on behalf of the worker is that the worker was appointed by the opposite

party on 1.4.74 and his date of birth was recorded in all statutory records as 5.5.56. The worker was unmarried at the time of entry into the employment of the opposite party and when he got married he moved an application for change of nomination in the CMPF records and worker became surprised to know that his date of birth in the statutory records had been corrected as 25.03.52. He coming to know about the said discrepancy made oral as well as written representations for change in the date of birth and the respondents assured that his date of birth will be changed. Worker also submitted an affidavit for change in date of birth as 28.03.52. It is further submitted that when nothing has been done in the matter, union raised a dispute before ALC© Allahabad and upon receipt of failure of conciliation report the appropriate government made the above reference to this tribunal.

4. On the basis of above it has been prayed that the date of birth of the worker deserved to be corrected in the official records of the company and he has every right to continue in the service of the opposite party.

5. Opposite party has filed its reply vehemently denying the claim of the worker. It is admitted by the opposite party that the worker had joined as General Mazdoor on 1.4.74. The management has denied that the worker concerned at the time of his joining entered his date of birth as 5.5.56 in all statutory records as alleged. The hard fact is that at the time of appointment an initial medical examination was done of the worker on 28.4.74 and his date of birth was recorded in medical report as 22 year i.e. 28.3.52. In all statutory and service records, which have been duly acknowledged by the workman at the relevant time. The date of birth of the worker is clearly mentioned as 28.3.52 in service book. All the above records had already been duly counter signed by the worker in token of his acceptance. The master health check up is not a statutory record and the date of birth mentioned on that form is recorded as stated by the worker concerned at the time of periodical health check up on 26.4.07, therefore, it is wrong to say that while entering into service at Khadia Project the date of birth of the worker was entered in all statutory records as 5.5.56 as alleged. In the form PS-3 the date of birth was recorded 5.5.56 by the worker concerned which was corrected as 28.3.52 as per office records and the copy of the same was given to the worker. The worker has submitted notarized affidavit dated 27.5.2010 at the fag end of his retirement in which he has stated his date of birth 5.5.56 hence the affidavit for date of birth at this highly belated stage is not acceptable. The worker submitted Form A for change of nominee in CMPF record on 5.5.10 and deliberately mentioned his date of birth as 5.5.56 which was brought to his notice that his date of birth is 28.3.52, and thereafter the worker corrected his date of birth in Form A in his own hand writing as 28.3.52 and put his signature where correction in date of birth was made by him. It is emphatically denied that the employer

has interpolated behind his back the date of birth of the worker in Form B as alleged. On the basis of above, it is prayed that the claim of the worker is devoid of merit and is liable to be rejected.

6. Worker Amarjeet Singh examined himself as w.w.1 and on behalf of management Vinayak Shanker, Assistant Manager, was examined as M.W.1. Both the parties have filed documents which shall be discussed at the relevant stage.

7. I have heard the arguments of both the parties at length and have also perused the records carefully.

8. Brief facts of the claim is that worker Amarjeet Singh was appointed as Mazdoor on 1.4.74 in Northern Coal Field Limited Khadia Project and at the time of entry in service his date of birth in all the statutory records as 5.5.56 recorded and after his marriage when he made an application for change of nomination he was surprised to see that his date of birth was mentioned as 28.3.52. Then he made oral as well as written representation for change of his date of birth and he was assured that his date of birth will be changed. He has filed copy of affidavit date 27.5.2010 which was given to the management for correction of his age and copy of application dated 5.3.11 given to the management for correction of his date of birth.

9. The case of the management is that it is admitted by the opposite party that the worker had joined as General Mazdoor on 1.4.74. The management has denied that the worker concerned at the time of his joining entered his date of birth as 5.5.56 in all statutory records as alleged. The hard fact is that at the time of appointment an initial medical examination was done of the worker on 28.4.74 and his date of birth was recorded in medical report as 22 year i.e. 28.3.52. In all statutory and service records, which have been duly acknowledged by the workman at the relevant time. The date of birth of the worker is clearly mentioned as 28.3.52 in service book. All the above records had already been duly counter signed by the worker in token of his acceptance. The master health check up is not a statutory record and the date of birth mentioned on that form is recorded as stated by the worker concerned at the time of periodical health check up on 26.4.07, therefore, it is wrong to say that while entering into service at Khadia Project the date of birth of the worker was entered in all statutory records as 5.5.56 as alleged. In the form PS-3 the date of birth was recorded 5.5.56 by the worker concerned which was corrected as 28.3.52 as per office records and the copy of the same was given to the worker. The worker has submitted notarized affidavit dated 27.5.2010 at the fag end of his retirement in which he has stated his date of birth 5.5.56 hence the affidavit for date of birth at this highly belated stage is not acceptable. The worker submitted Form A for change of nominee in CMPF record on 5.5.10 and deliberately mentioned his date of birth as 5.5.56 which was brought to his notice that his date of

birth is 28.3.52, and thereafter the worker corrected his date of birth in Form A in his own hand writing as 28.3.52 and put his signature where correction in date of birth was made by him. It is emphatically denied that the employer has interpolated behind his back the date of birth of the worker in Form B as alleged.

10. W.W.1 worker has admitted that at the time of his appointment no document regarding his date of birth was given by him and orally he has told about his age to 19-20 years. He was medically examined. He has admitted that he has signed his service book and has also admitted that he came to know about his date of birth in 2010 and thereafter he raised his objection. He further admitted that he had not raised any dispute with regard to his date of birth till 27.5.2010 as he presumed is date of birth must be written correctly.

11. M.W.1 Sri Vinayak Shanker Assistant Manager of management has also supported the versions of the management that at the time of appointment of worker his date of birth was mentioned as 28.3.52 on the basis of medical report and he has not given any certificate of his educational qualification showing his date of birth and after the medical examination he also made his signature over the medical record. He has cleverly filled up application for change of nomination mentioning his date of birth as 5.5.56.

12. Worker has relied upon the circular of management paper no. 20-24 wherein it is written that in the case of appointment who had pursued studies in the recognized educational institutions the date of birth recorded in the school leaving certificate shall be treated as correct and the same will not be altered. It is also given that in case of illiterate persons the date of birth will be determined by the medical officer.

13. Paper no. 13/13-14 is medical examination report of worker conducted at the time of appointment I which his age is recorded 22 years and the worker has also made his signature on this medical report and on the basis of this report his date of birth was mentioned in his service book as 28.3.52 which is also said to have been signed by the worker and in all the other relevant documents made available by the management his date of birth is mentioned as 28.3.52 and on the representation of worker report of staff officer paper no. 13/6 was prepared and filed in the case where it has been clearly mentioned that on the basis of medical report his date of birth was recorded as 28.3.52 and worker has made his signature over it and the worker has submitted his representation after expiry of 37 years of service, which cannot be accepted.

14. In other document paper no.14/7-8 by which he was given promotion his date of birth was mentioned as 28.3.52.

15. From the above discussions, I come to the conclusion that worker has not submitted any proof of his

age at the time of his appointment and therefore, his age was ascertained by his medical examination which was accepted by making his signature and same age mentioned in his service book and in all the other records. Worker has filled up few forms by mentioning his wrong date of birth but he could not succeed and made his representation for correcting his age as 5.5.56 after 37 years of his service when he was at the verge of his retirement which was turned down by the management.

16. Hon'ble Apex Court in 1993-11 CLR page 193 Union of India versus Harnam Singh has held that just before a few months before superannuation seeking correction in date of birth, his inaction for all the period of 35 years precludes him from showing that entry of his date of birth in records is not correct.

17. In another case of Hon'ble Apex Court in 1996 LLR 585, Union of India Versus Ram Sua Sharma has held that court of tribunal at the belated stage cannot entertain claim for correction of date of birth duly entered in the service records.

18. Therefore, from the above, worker has failed to prove his case that the management has not recorded his date of birth correctly or has made alteration in the recorded date of birth or has not recorded his date of birth correctly as 5.5.56 because his long silence for 37 years in accepting his date of birth as 28.3.52 and not raising any hue and cry or not making any representation for correction in his date of birth precludes himself for raising his objection at the verge of his retirement is sufficient ground to hold that the action of the management in refusing to amend the date of birth of the worker as 5.5.56 in their records is just fair and legal. Union or worker is therefore, not entitled for any relief pursuant to the present reference order.

Reference is answered accordingly against the worker/union and in favor of the management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 655 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ सं. 17/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 655 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial

Tribunal-cum-Labour Court, Godavarikhani (IT/ID/17/2011) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 05.04.2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CHAIRMAN, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-CUM-VI
ADDL. DIST. & SESSIONS COURT,
GODAVARIKHANI**

Present : SRI G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

INDUSTRIAL DISPUTE No.17 OF 2011

Friday, the 26th day of February, 2016

Between:-

1. Budida Gattaiah,
S/o. Ramulu (died),
per L.Rs.,
2. Budida Swaroopa,
W/o. Late Gattaiah,
Age 41 years, Occ: House wife.
3. Budida Manjula Devi,
D/o. Late Gattaiah,
Age 27 years
4. Budida Keerthi Priya,
D/o. Late Gattaiah,
Age 13 years.
All are R/o.Chandrashekhar Nagar,
Godavarikhani

And

1. The Chief General Manager,
Singareni Collieries Co.Ltd.,
Ramagundam Area-I,
PO: Godavarikhani,
Dist.Karimnagar.
2. The Chairman & Managing Director,
Singareni Collieries Co.Ltd.,
PO. Kothagudem,
Dist.Khammam

This case coming before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate for the petitioner and of Sri D.Krishna Murthy, Advocate for the respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This petition is filed U/Sec. 2(A) (2) of I.D. Act praying to set aside the dismissal order dt.04-5-2000 passed by the Respondent No.1 and grant all consequential benefits to the petitioners 2 to 4 who are the L.Rs., of the deceased 1st petitioner.

2. Allegations in the petition are as follows:-

The petitioner No.2 to 4 are the Legal Heirs of late Budida Gattaiah, ex-employee of the respondents' company who was appointed in the year, 1980. He was dismissed from service on 7-5-2000. His health was not good, he used to remain absent in the year 1999 for that Respondent No.1 issued charge sheet, he explained his inability of his ill-health. The respondents' company initiated disciplinary action against Budida Gattaiah, ex-employee under 25:25 of standing orders of company and dismissed him from service. The said Nagabhushanam, ex-employee had put in 20 years of service. Because of ill-health, he could not attend his duties in 1999. The respondents' company did not conduct a fair and proper enquiry. Respondents have adopted unfair labour practice against Budida Gattaiah, ex-employee. As per the advise of R-1, Budida Gattaiah, ex-employee attended interview before the High Power Committee, Kothagudem on 21-4-2005, but he was not given employment. Hence, they pray to allow the petition.

3. In response to this challenge, respondents filed counter justifying the dismissal of the petitioner. The respondents company being mining industry is a Central Government subject and the petitioner ought to have approached the CGIT, Hyderabad. This petition is not maintainable before this Court and is liable to be dismissed.

4. The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1). Budida Gattaiah, ex-employee was dismissed from service in the year 2000. The petitioner kept quiet for all these years and filed this petition after lapse of 10 years which is barred by limitation U/Sec.2A(3) of Industrial Disputes Amendment Act, 2010. Budida Gattaiah, ex-employee was initially appointed in the respondents company as Badli Filler on 28-04-1980 and was dis-empanelled from service in the year 1985 due to his poor performance and absenteeism. Later he was appointed as afresh Badli Filler vide office order dt. 26-6-1990 and re-appointed as coal filler on 01-09-1995. The petitioner was irregular to his duties. According to Section 52(2) of the Mines Act, 1952 an underground employee is required to put in minimum musters of 190 and surface employee is expected to put in minimum of 240 musters. The following attendance particulars of the petitioner indicate the fact that the petitioner was not regular to his

duties and in no year he had put in 190 musters during the period from 1996 to 2000.

Sl.No.	Year	No. of musters
1.	1996	110
2.	1997	96
3.	1998	49
4.	1999	38
5.	May, 2000	12

During the period from January, 1998 to December, 1998, the petitioner had put in only 49 musters. As the above act amounted to misconduct under Standing Orders Clause No.25.25 of the company, the petitioner was charge sheeted as under:-

“Clause 25.25 – Habitual late attendance or habitual absence from duty without sufficient cause”.

After considering the documentary evidence and other evidence on record, the enquiry officer submitted his unbiased report holding that the petitioner is guilty of misconduct under company standing orders. The enquiry officer conducted the enquiry duly following the principles of natural justice and the petitioner participated in the enquiry. During the enquiry Budida Gattaiah, ex-employee, ex-employee stated that due to ill-health, he could not attend his duties and therefore he remained absent to his duties and voluntarily accepted the charge levelled against him. The respondents' company, having gone through the past record of Budida Gattaiah, ex-employee, was constrained to dismiss him from service. Hence, his case does not fall within the ambit of the Memorandum of Settlements. Therefore, the respondents pray to dismiss the petition without granting any relief to the LRs., of the deceased Budida Gattaiah, ex-employee.

5. During the course of hearing, Ex.W-1 to Ex.W-3 and Ex.M-1 to Ex.M-11 are marked.

6. Heard both sides. Perused the material papers on record.

7. On a consideration of respective contentions of the parties, the following points require to be determined:-

1. “Whether this Tribunal has got jurisdiction?”
2. “Whether the petitioners (LRs of the deceased workman) are entitled to any relief?”

8. POINT No:1. As per the Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11 between U. Chinnappa And Cotton Corporation of India, this Court has got jurisdiction to entertain the dispute raised by the petitioner. Hence, the point is accordingly answered in favour of the petitioners.

9. Point No. 2:- The petitioner No.1 was initially appointed as Badli Filler and he was dis-empanelled from

service in the year 1985 due to poor performance and absenteeism. He was again appointed as afresh Badli Filler in the year 1990 and re-appointed as Coal Filler on 1-9-1995. The attendance particulars from the year 1996 as furnished in the counter are:-

Sl.No.	Year	No. of musters
1.	1996	110
2.	1997	96
3.	1998	49
4.	1999	38
5.	May, 2000	12

Charge sheet dt.10-3-1999 was issued for his absenteeism during the year 1998 and for putting only 49 musters which is marked as Ex.M-1. Ex.M-1 to Ex.M-5 are enquiry notices issued to the petitioner No.1. The enquiry officer's report marked as Ex.M-7 shows that the charge levelled against the petitioner No.1 was proved and he was dismissed from service by order dt.4-5-2000 under Ex.M-11.

10. As can be seen from the above record produced before this court, the attendance of the deceased workman was very poor from the year 1996 till 2000. Even prior to that, he was dis-empanelled from service in the year 1985 due to poor performance and absenteeism. He was re-appointed as afresh Badli Filler in the year 1990 and re-appointed as Coal Filler w.e.f., 1-9-1995. He was dismissed from service by order dt.4-5-2000. He raised the Industrial Dispute assailing the above dismissal order in the year 2011. After his death, his LRs., have come on record. Considering the long delay of nearly 12 years and also the long rope given by the respondents prior to his dismissal i.e., reappointing him in the year 1990, his failure to offer any explanation for his absenteeism during charge sheeted year and during the previous years from 1997 to 2000 as shown in the above tabular, this court is of the considered opinion that there are no mitigating circumstances to interfere with the punishment of dismissal from service imposed by the respondents; and I hold that this is not a fit case to exercise the discretionary powers vested U/Sec.11-A of ID Act. Under these circumstances, this petition is liable to be dismissed for want of merits. Accordingly, the petition is dismissed, but without any costs.

11. In the result, the petition is dismissed, but without any costs.

Typed to my dictation by Typist, corrected and pronounced by me in open Court, on this the 26th day of February, 2016.

SRI G V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence**Witnesses Examined**

For workman : For Management :

-Nil-

-Nil-

EXHIBITS

For workman:-

Ex.W-1 Dt. 13-07-2006 Demand letter, x.copy

Ex.W-2 Dt. 05-05-2000 Letter issued to petitioner that his name was removed from rolls, x.copy

Ex.W-3 Dt. 12-04-2005 Letter issued to petitioner to attend interview before High Power Committee

For Management:-

Ex.M-1 Dt. 10-03-1999 Charge sheet

Ex.M-2 Dt. 19-05-1999 Enquiry notice with ack.,

Ex.M-3 Dt. 20-09-1999 Enquiry notice along with ack.,

Ex.M-4 Dt. 13-01-2000 Enquiry notice along with ack.,

Ex.M-5 Dt. 18-01-2000 Enquiry notice along with ack.,

Ex.M-6 Dt. 24-01-2000 Enquiry proceedings.

Ex.M-7 Dt. 03-02-2000 Enquiry report.

Ex.M-8 Dt. 10-03-2000 Show cause notice

Ex.M-9 Dt. 24-03-2000 Undelivered postal returned cover with ack.,

Ex.M-10 Dt. 15-04-2000 Petitioner's name was published in Vaartha daily newspaper

Ex.M-11 Dt. 04-05-2000 Dismissal order.

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 656 .—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में ऑद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ सं. 21/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 656.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the Award of the Industrial Tribunal-cum-Labour Court, Godavarkhani (IT/ID/21/2015) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 05.04.2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DIST. & SESSIONS COURT,
GODAVARIKHANI**

Present : SRI G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

INDUSTRIAL DISPUTE No. 21 OF 2015

Friday, the 26th day of February, 2016

Between:-

Erikilla Rajam, S/o. Yellaiah,
E.No.2823983, coal Filler,
RK NT Incline, R/o. Singapuram,
Mandal Mancherial,
Dist.AdilabadPetitioner

And

1. The General Manager, SC Co.Ltd.,
Srirampoor, Post Srirampoor,
Dist.Adilabad.
2. The Chief Managing Director,
SC Co.Ltd., Red Hills, Singareni Bhavan,
Lakdikapool, HyderabadRespondents

This case coming before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate for the petitioner and of Sri D.Krishna Murthy, Advocate for the respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This petition is filed U/Sec. 2(A)(2) of I.D., Act challenging the dismissal of the petitioner by the respondents praying for his reinstatement into service with continuity of service, all attendant benefits and full back wages or VRS, GHS or VRS LPE 2008.
2. Petitioner was dismissed from service by the respondents vide office order dt.05-01-2007 with the following charge.

CHARGE:-

“Habitual absence from duty without sufficient cause”.

3. Petitioner challenges his dismissal order as follows. He was appointed on 1-1-1980. The petitioner discharged his duties to the fullest satisfaction of his superiors till 2007. As the health of petitioner deteriorated in 2004 and 2005, he used to absent. The respondent issued charge sheet and dismissed him from service on 5-1-2007. The respondent conducted enquiry and the petitioner participated in the enquiry. Petitioner requested the management to consider the case under VRS, GHS of company as he was fit person to claim benefits and the company also initiated VRS LPE scheme of Rs.5.00 Lakhs to each employee and the company considered the cases of several persons, but in the instant case, the company adopted unfair labour practice. Petitioner was getting salary of Rs.20,000/- per month at the time of his dismissal and he is going to retire on 15-12-2016. Punishment of dismissal from service is extremely harsh, highly excessive and shockingly disproportionate. Hence, the petitioner prays to allow the petition.

4. In response to this challenge, respondents filed counter justifying the dismissal of the petitioner. The petitioner was dismissed from service in the year 2007. The petitioner kept quiet for all these years and filed this petition after lapse of 8 years which is barred by limitation U/Sec.2A(3) of Industrial Disputes Amendment Act, 2010. The petitioner was appointed in the respondents company as Badli Filler on 10-04-1987. The petitioner was irregular to his duties. According to Section 52(2) of the Mines Act, 1952 an underground employee is required to put in minimum musters of 190 and surface employee is expected to put in minimum of 240 musters. The petitioner was a chronic absentee, had put in only 71 musters in the year 2005. The following attendance particulars of the petitioner indicate the fact that the petitioner was not regular to his duties.

Sl.No. Year No. of musters.

1.	1998	97
2.	1999	124
3.	2000	107
4.	2001	60
5.	2002	34
6.	2003	9
7.	2004	125
8.	2005	71
9.	2006	65

During the period from January, 2005 to December, 2005, the petitioner had put in only 71 musters. As the

above act amounted to misconduct under Standing Orders Clause No.25.25 of the company, the petitioner was charge sheeted. After considering the documentary evidence and other evidence on record, the enquiry officer submitted his unbiased report holding that the petitioner is guilty of misconduct under company standing orders.

5. The respondents company after considering the past record of the petitioner and on findings that there were no extenuating circumstances for taking a lenient view was constrained to dismiss the petitioner from service. The respondents' company conducted the enquiry proceedings duly in accordance with the principles of natural justice and law giving full opportunity to the petitioner who participated in the enquiry. Therefore, the respondents pray to dismiss the petition without granting any relief to the petitioner.

6. During the course of hearing, Ex.W-1 to Ex.W-5 and Ex.M-1 to Ex.M-9 are marked.

7. Counsel for the petitioner filed Memo U/Sec. 11-A of I.D., Act stating that he is not challenging the validity of domestic enquiry conducted by the respondent and prayed this Tribunal to decide the quantum of relief to which the petitioner is entitled.

8. Heard both sides. Perused the material papers on record.

9. Written arguments are filed by respondents.

10. The points for consideration are:-

1. Whether the petition is barred by limitation?
2. Whether the petitioner is entitled to be reinstated into service?

11. POINT No.1:- Section 2 of ID Act as prevalent in this State does not prescribe any limitation. Period of 3 years provided under Sub-Sec.3 of Central enactment is not made applicable in this State. Further under Sec.5 of Limitation Act, the delay if any can be condoned taking into consideration the explanation offered by the petitioner in the main petition itself and that filing of formal application for condonation of delay is not sine qua non for exercising the power to condone the delay available to the authorities, as per the decision of the Hon'ble High Court reported in 2015 (2) ALT 534 between Gadde Krishna Murthy and others Vs., Mandal Revenue Officer, Seethanagaram, East Godavari District & others. Further Sec.5 and Article 137 of Limitation Act are not applications confined to CPC and the words “any other applications” under Article 137 would be any application under any Act made to a court, as per the decision of the Hon'ble High Court reported in 2014 (6) ALT 543 between Desam Venkateswara Reddy and others Vs., Special Deputy Collector & Competent Authority (Land Acquisition), Gas Authority of India Ltd., Vijayawada and another. Considering all the above facts, I hold that this

petition cannot be thrown out on the ground of bar of limitation. This point is accordingly answered in favour of petitioner. The petitioner did file a petition before this Tribunal, it was not registered and the petitioner filed a writ seeking registration of the petition. Therefore, it cannot be stated that there was inordinate delay in approaching this Tribunal. This point is answered in favour of petitioner.

12. POINT No.2:- Admittedly the petitioner was punished for unauthorized absenteeism in the year 2002 by reduction of two special piece rated allowance (SPRA), by order dt.16-3-2005. According to the respondent, the attendance of the petitioner was poor during the years, 2005 & 2006 also. The petitioner was appointed in the year 1980 and he worked for nearly 10 years, without any blemish. The explanation of the petitioner is that due to ill-health, he could not attend to his duties. In the enquiry report, it is pointed out that the petitioner did not cross examine the witnesses examined on behalf of the respondents/management. During the enquiry, the petitioner was not having assistance from the recognized union. When the petitioner pleaded ill-health for his absence, even though the petitioner did not take treatment from the SCCL hospital the version of the petitioner can be believed regarding his ill-health, taking into consideration his previous satisfactory service of 20 years. The work of the petitioner is hard manual work in the underground mine. Therefore, absence due to ill-health after 20 years service has to be considered taking into account the nature of duties discharged by the workman for about 20 years without any blemish. Therefore, I am of the considered opinion that the extreme punishment of dismissal from service without considering the satisfactory service of 20 years of the petitioner, cannot be sustained.

13. The petitioner was aged 49 years, 6 months as on 9-8-2011 and thus he is aged about 54 years now. Considering the age of the petitioner, instead of directing reinstatement, the proper order would be to treat the petitioner as if he voluntarily retired from service as on the date of the last day of his attending to duty. The petitioner is entitled to consequential retirement benefits for the service rendered by him which are available to a voluntarily retired employee.

14. In the result, the order of dismissal dt.0-01-2007 marked as Ex.M-7 is set aside. The respondents' company is directed to treat the petitioner as if he were voluntarily retired from service as on the date of the last day of his attending to duty. The petitioner is entitled to consequential retirement benefits for the service rendered by him which are available to a voluntarily retired employee.

Typed to my dictation by Typist, corrected and pronounced by me in open Court, on this the 26th day of February, 2016.

SRI G V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman :

-Nil-

For Management :

-Nil-

EXHIBITS

For workman:-

Ex.W-1 Dt. 24-09-2014 Demand letter

Ex.W-2 Dt. -do- Letter addressed to the G.M.,
SCCL for supply of documents under RTI Act.

Ex.W-3 Dt. 28-10-2014 Letter to the AGM,
Sreerampur Area by Dy.GM,
RK-NT Incline, SRP area

Ex.W-4 Dt. 21-08-2006 Enquiry material record

Ex.W-5 Dt. 03-01-2007 Dismissal order x.copy

For Management:-

Ex.M-1 Dt. 24-07-2006 Charge sheet.

Ex.M-2 Dt. 21-08-2006 Enquiry notice.

Ex.M-3 Dt. 30-08-2006 Reply to charge sheet.

Ex.M-4 Dt. -do- Enquiry proceedings.

Ex.M-5 Dt. -do- Enquiry report.

Ex.M-6 Dt. 27-10-2006 Show cause notice.

Ex.M-7 Dt. 03-01-2007 Dismissal letter.

Ex.M-8 Dt. 02-09-2011 Circular No.LRP/PER/IR/S/ 555/1399 along with Annexure-I

Ex.M-9 Dt. 16-03-2005 Letter issued to petitioner by respondent punishment given to petitioner (penalty of reversion to lower stage).

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 657 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 56/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/275/2006-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 657 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the Award (Ref. No. 56/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/275/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/56/07

General Secretary,
Koyla Shramik Sabha (HMS),
Regional Kanhan Area,
PO Ambvara Via Iklehra,
Tehsil Parasia, Chhindwara

Versus

Chief General Manager,
Western Coalfields Limited,
Kanhan Area, PO Dungaria,
Chhindwara ...Management

AWARD

Passed on this 17th day of March, 2016

1. As per letter dated 5-7-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/275/2006-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of WCL in dismissing Shri Sanjay Aggarwal from services w.e.f. 15-11-2000 is legal and justified? If not, to what relief is the workman entitled?”

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted through Union at Page 8/1 to 8/7. The claim of 1st party workman is workman Sanjay Aggarwal was appointed on compassionate ground after death of his father as tub loader on 2-7-91. His Form B Register was maintained. After some years of his appointment, he was suffering from diabetes. He was temporarily allowed the work as time rated category work. Workman was transferred from Nandan Mine to Tandsi Project. As per agreement between management and Union dated 2-2-96, basic pay of time rated category was protected. Workman was not given benefit. He suffered loss of Rs.100 per month. In June 96, workman suffered from illness. He received treatment in Mines Hospital at Junnardeo and at Nagpur. Despite

treatment received in the hospitals, workman was not fully cured. Workman was unable to attend duties from 31-3-97, its intimation was given by workman to the management. That chargesheet was issued to workman on 25-8-97 alleging unauthorized absence for the period 31-3-97 to 24-8-97 for absence without intimation etc. workman submitted reply to the chargesheet denying charges against him. After workman was recovered from his illness, on 5th September, he came to join alongwith medical certificate but he was not allowed to join. Workman submits that Shri V.K.Shrivastava was appointed Enquiry Officer, Shri R.K.Kashyap as Management Representative. It is reiterated that enquiry was not properly conducted. He was not allowed opportunity for his defence. Enquiry conducted exparte was illegal and conducted in violation of principles of natural justice. Any notice was not given to him. His services were terminated on 15-11-2000 without notice. Retrenchment compensation was not paid. Workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 10/1 to 10/9 opposing claim of workman. 2nd party submits that workman was appointed as tub loader on 22-7-91. He was transferred from Nandan to Tandsi project. Workman was irregular in attendance. In 1996- he worked for 10 days, in 1997 for 14 days, in 1998 for 53 days and in 1999 for 7 days. Charge sheet was issued to workman. Enquiry was conducted against him as per rules on various dates. On 29-3-99 workman alongwith his co-worker was present. Management's representative given his evidence on behalf of management. He was cross-examined and discharged. On 1-8-09, workman produced certain documents. Evidence in Enquiry Proceedings shows that attendance of workman was poor. Enquiry Officer submitted his findings. Considering the proved charges, findings of Enquiry Officer charges against workman are proved, workman was terminated on 15-11-2000. Incidentally 2nd party submitted that medical facilities are provided to its employees. 2nd party denies that enquiry conducted against workman in violation of principles of natural justice. That workman was not allowed opportunity for his defence. Enquiry was conducted properly.

4. As per order dated 21-3-14, enquiry conducted against workman is found proper and legal.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative

(iii) If not, what relief the workman is entitled to?"

Workman is not entitled to any relief.

REASONS

6. Point No.1- Enquiry conducted against workman is found proper and legal, whether charges alleged against workman are proved or not needs to be decided from evidence in Enquiry Proceedings. Exhibit M-1 is chargesheet issued to workman under clause 26.30 of standing orders for unauthorized absence more than 10 days without sanctioned leave. The intimations of enquiry given to the workman are produced at Exhibit M-2 to M-7. Exhibit M-8 is order allowing workman to join duty from 12-9-97. As per order Exhibit W-20, workman was allowed to join duty on 9-5-00 pending enquiry. Enquiry Proceeding is produced. Statement of Shri R.K.Kashyap Presenting Officer shows workman was absent without permission during the period 31-3-97 to 24-8-97. Workman was also absent in the past. His attendance in 1996- he worked for 10 days, in 1997 for 14 days, in 1998 for 53 days and in 1999 from Jan to Feb- Nil. Statement of workman was recorded at Page 13. Workman explained that he was suffering from illness for 1-2 months. Because of weakness, he could not attend duty. The evidence in enquiry proceedings proves charges alleged against workman. The evidence in Enquiry proceedings does not required to be appreciated. For above reasons, I record my finding in Point No.1 in Affirmative.

7. Point No.2- In view of my finding in Point No. 2 charges alleged against workman are proved, question arises for decision whether punishment of dismissal imposed against workman is disproportionate. The evidence of management's representative Mr. Kashyap shows that details of working days of workman in 1996-97 & 97-98 the attendance of workman was very poor. The evidence of workman shows that he was suffering from illness, because of illness, he could not attend duty.

8. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in

Eveready Industries India Ltd. Jabalpur and others versus Shri P.S. Parihar and another reported in 2003(3)MPHT 257. His Lordship in Para 10 of the judgment held- The petitioner company showed all sympathy and spent a huge amount in providing medical treatment to him but the company could not continue to retain him as he had become a dead wood. Respondent No.1 was not working efficiently and his appraisal reports show that there were no signs of improvement.

Even in present case, evidence shows that attendance of workman from 1996 to 97 was very poor. Workman was suffering from illness he was receiving

treatment in hospital. On the ground of illness, workman was unable to attend duty.

9. Shri A.K.Shashi relies on ratio held in case of

New India Assurance Co.Ltd versus Vipin Beharilal Srivastava reported in AIR-2008(3)SCC-446. Their Lordship dealt with proper mode for obtaining sick leave the order of tribunal directing reinstatement with backwages on ground respondent suffering from Tuberculosis etc was sustained. Order directing removal from service was maintained.

In present case, chargesheet was issued for unauthorized absence for the period 31-3-97 to 24-8-97, he had submitted application that he was on sick leave. Ratio cannot be applied beneficially as facts of present case are not comparable. However charges alleged against workman about unauthorized absence is proved, his attendance during 96 was very poor. Workman in his evidence says he was suffering from illness and unable to attend duty, the order of removal does not call for interference. Point No.2 is answered accordingly in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of WCL in dismissing Shri Sanjay Aggarwal from services w.e.f. 15-11-2000 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2016

का.आ. 658 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 166/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2016 को प्राप्त हुआ था।

[सं. एल-22012/283/2002-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2016

S.O. 658 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 166/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of SECL and their workmen, received by the Central Government on 05.04.2016.

[No. L-22012/283/2002-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/166/2003

General Secretary,
Rashtriya Koyla Khadan
Mazdoor Sangh (INTUC),
B/39, Bartunga Parashpani,
PO Chirimiri,
Distt. Korea (CG) ...Workman/Union

Versus

Sub Area Manager,
West Chirimiri Sub Area of SECL,
PO West Chirimiri,
Distt. Korea(CG) ...Management

AWARD

Passed on this 17th day of March, 2016

1. As per letter dated 13-10-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/283/2002-IR(CM-II). The dispute under reference relates to:

“Whether the demand of Shri Kamal Khan S/o Dilshad Khan, Timber Mazdoor, represented through Rashtriya Koyalak Khadan Mazdoor Sangh (INTUC), to regularize/ confirm his services as a clerk (Registration) w.e.f. January 1993 is legal and justified? If so, to what relief he is entitled?”

2. After receiving reference, notices were issued to the parties. 1st party Union submitted statement of claim at Page 3/1 to 3/3. Case of 1st party workman is that he was working as timber mazdoor category. He was employed in 1982 as timber mazdoor. He was working with devotion. His service record was unblemished. Management directed him to work as registration clerk. His main duty was to maintain record of out door patients and maintain record in the colliery hospital. That Shri Kamal Khan was working as registration clerk since 1993 without break and performing the duties as registration clerk. However he was paid salary of post of timber mazdoor Category III. Salary for the post of clerk was not paid to him is alleged to be unfair labour practice. That repeatedly demands were made for regularization of Shri Kamal Khan. Management constituted committee consisting of Dy. General Manager, Shri B.R. Reddy, Finance Manager and Shri R.K. Yadav Personnel Manager. Said committee found that the claim of Kamal Khan was correct. He was working as registration clerk in West Chirimiri Clerk. He was allowed work as such by the management. When Union raised the issue it was that workman cannot be regularized as there are 5 sanctioned posts and 11 workers

were working. The claim of Kamal Khan was not disputed by the management. There is no justification in extracting work from him and not regularizing under the pretext of sanctioned post. Reference is also made to ratio held in various case. Ist party contends that action of the management denying to extract work of higher scale and pay less wages of timber mazdoor denying regularization in the post of registration clerk is unfair labour practice. On such ground, Union prays for regularization of Kamal Khan on post of registration clerk, seniority and consequential benefits.

3. 2nd party filed Written Statement at Page 4/1 to 4/10 opposing claim of workman. Preliminary objection is raised that regularization to the post of clerk is claimed from January 93. The dispute is raised in 2003 is highly belated and not tenable. Workman slept over for long period. That Kamal Khan was initially appointed as mazdoor Cat-I in NCPH. He was transferred to Chirimiri colliery. Kamal Khan was promoted as timber mazdoor cat-III on 30-1-91. He was doing the job of timber mazdoor and paid wages of timber mazdoor cat-III. Management maintains statutory record, Form B, Attendance Register etc. the service conditions of employees working in Coal Industry are covered by NCWA, cadre scheme. The cadre scheme are provided for general clerical grade, loading dispatch cadre. Accounts cadre. There is no post of registration clerk in cadre scheme. The claim for regularization of workman to the post of clerk is in violation of the cadre schemes and guidelines had the workman working on the post of clerk he would have claimed regularization earlier without waiting for 14 years. The promotion cannot be claimed as a matter of right. It depends on administrative requirement, availability, eligibility and recommendations of DPC. The qualified persons employed as general mazdoor are given preference for selection to the post of clerk and when requirements take place. The cadre scheme for post of clerk prescribes minimum educational qualification matriculation or equivalent from recognized board, 3 years service experience, mode of promotion by selection/ test.

4. That SECL Hqr issued circular dated 1-10-99 intimating no diversion of man power to non-productive jobs and any diversion in any circumstances by colliery Manager to be viewed as misconduct. Vide circular dated 3-2-2000 issued by Area Personnel Manager Hqr,. Time rated employee deployed in clerical job directly or indirectly in case of any employees posting from underground to surface would be taken very seriously. Office order dated 10-4-93 was issued by SECL hqr. That company was having surplus clerical strength, no person shall be placed in clerical cadre. That claim of workman is based on the ground that he was promoted to work as clerk for few months, it doesnot give him right for regularization. Workman was never authorized to work as registration clerk by the authority. He was not paid wages of said post. Workman did not claim wages for the post of clerk for long time. Claim of workman cannot be accepted.

5. In parawise reply, 2nd party submits that management is bound to act according to rules and regulations. That workman is not entitled to receive wages for the post of clerk. Workman has made false claim against management. The fund being used is public money. No one should be permitted to misuse public money. Workman cannot be allowed promotion to the post of clerk in such manner. The dispute was discussed between the Union and the management. The Union was convinced that the workman was not entitled for regularization to the post of clerk. It is denied that company made any recommendation in favour of workman. 2nd party did not dispute workman was working with the management. However claim for his regularization for post of clerk is denied. 2nd party prays reference be answered in its favour.

6. 1st party Union filed rejoinder at Page 15/1 to 15/6 reiterating contentions in statement of claim that Kamal Khan was deployed as clerk in hospital of Chirimiri colliery in 1993. As per circular dated 13-8-96, he submitted his service particulars for post of clerk. When Union took up the case of workman before management for regularization for post of clerk as per letter dated 18-4-01, it was informed that workman was working as clerk in colliery hospital. As per letter dated 9-7-01, Dy. Chief Personal Manager submitted detailed information regarding working of Kamal Khan as clerk in Chirimiri Hospital. The committee was constituted to examine the matter submitted findings on 15-3-02 regarding regularization of the workman. Other contentions in statement of claim are reiterated in rejoinder.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of Shri Kamal Khan S/o Dilshad Khan, Timber Mazdoor, represented through Rashtriya Koyalak Khadan Mazdoor Sangh (INTUC), to regularize/ confirm his services as a clerk (Registration) w.e.f. January 1993 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman not entitled to any relief.

REASONS

8. The term of reference pertains to claim for regularization of Kamal Khan timber mazdoor Cat-III to the post of clerk registration. Management of 2nd party is opposing his claim under Written Statement.

9. Workman Kamal Khan filed affidavit of his evidence supporting his claim that he was working as Registration clerk from January 1993. He had submitted details of his working as per circular dated 13-8-96 for the post of clerk. Management had constituted committee

regarding his claim for regularization as clerk consisting of Dy. General Manager, Shri B.R. Reddy Finance Manager and Shri R.K. Yadav Personnel Manager. The committed found truth in his claim. Personnel Manager West Chirimiri colliery had submitted information about his working as clerk on 18-4-01. In his cross examination workman says he was initially engaged as casual mazdoor. He was given order in writing, he was working at Chirimiri mines. He was assigned duty in hospital in 1993, no order in writing was given to him about his duties in the hospital. He admits that there is no cadre scheme for the post of general mazdoor. Cadre scheme is provided for the post of clerk. He was unable to tell whether there was no post of registration clerk in cadre scheme. Regional Manager had sent him for working in hospital. Medical Officer had sent him for working in hospital. Medical Officer directed him to work as registration clerk at the time he was working as timber mazdoor Cat-III. He claims ignorance whether pay scale of registration clerk is higher to the post of mazdoor category. While he was working in the hospital as clerk, he was receiving salary of timber mazdoor Cat-II. He claims ignorance about different pay scales of the post. He did not complain about it. He was not knowing procedure for selection of clerk. He received written communication about formation of committee about his complaint. He was unable to tell he had complained about promotion in 96. Workman was unable to tell the Union raised dispute about his promotion. Management is maintaining his service book, form B documents marked Exhibit M-1, M-2.

10. Affidavit of evidence of management's witness Shri Augustus Tigga is filed supporting contentions of management that Kamal Khan was appointed as Category I Mazdoor in NCPH Colliery. He was promoted to the post of Timber Mazdoor Cat-III on 30-1-91. That cadre scheme provides for general clerical cadre, store personnel, loading dispatch, sales cadre. As per cadre scheme, the appointment of clerk Grade III qualification is matriculation. 3 years service in company. Mode of selection is by promotion. Management's witness in his cross says hospital was not under his control. He was acquainted with Kamal Khan working as timber mazdoor. He was not working in hospital. His attendance was maintained in colliery hospital. He had seen Kamal Khan in hospital in 1995 but he did not see him working in the hospital. From his evidence in cross-examination, Exhibit W-30 was admitted in evidence. He was unable to tell what action was taken against workman.

11. Perusal of documentary evidence shows Exhibit W-1 is letter dated 13-8-96 calling information about details of employees working against higher post. Exhibit W-2 is application submitted by workman claiming he was working as Registration clerk since last 4 years and claiming regularization. The endorsement is made by Medical Suptd. Kamal Khan was working in hospital since January 93 as registration clerk. Exhibit W-3 is application

submitted by Kamal Khan on 19-8-96 claiming regularization. Documents Exhibit W-4 to W-14 are copies of the documents written by Kamal Khan while working in the hospital. Exhibit W-15 is letter issued by Union Secretary dated 11-3 requesting management to look into the claim for regularization as clerk. Exhibit W-16 letter issued by Personnel Manager shows that workman was working in West Chirimiri Colliery Hospital as Registration Clerk. Exhibit W-17 is letter issued by Dy. Chief Personnel Manager enclosing copies of relevant documents directing General Manager to look into the matter. Exhibit W-18 is copy of documents written by workman in the hospital. Exhibit W-19 is letter directing committee to examine in what capacity Kamal Khan was allowed to work in colliery hospital as Registration Clerk, on what basis he was allowed to work so and whether permission of competent authority was obtained. The officer responsible for such deployment of Kamal Khan, the Committee submitted its report Exhibit W-20. The Committee had found hand written notes dated 22-3-2000 by Dr. Shri Giri Medical Suptd. Who accepted that Kamal Khan had been doing job of registration clerk. The document Exhibit W-21 to 28 are the copies of documents written by workman while working in the hospital. Exhibit W-29 shows Dy. Personnel Management informed General Manager about educational qualification of workman was HSc. His working days in 99 was 317 days, 242 days in 2000 & 277 days in 2001. The documentary evidence corroborates evidence of workman that he was working as clerk in hospital. The absence of post of registration clerk in cadre scheme is not material as evidence shows that he was working as clerk in the hospital.

12. The question remains whether workman is entitled for regularization on the post of clerk while he was holding post of Cat-III Mazdoor. The cadre scheme provides appointment of clerk qualification matriculation experience 3 years mode by selection/ test. Ist party workman was subjected to such selection process or test. There is no cadre scheme for post of General Mazdoor as admitted by workman in his cross-examination. Any rule is not brought to my notice under which the claim for regularization on post of clerk would be allowed.

13. Shri Vijay Tripathi learned counsel for workman in support of claim of workman relies on ratio held in

Shri Vijay Tripathi submits that claim of workman for regularization was agitated time to time, committee was constituted. Dispute is raised in 2003 is not barred by time. Ratio held in case supports his argument.

14. Shri A.K.Shashi for management relies on ratio held in

Case of Indian Iron and Steel Co.Ltd. versus Prahlad Singh reported in 2001(1)SCC-424 & 2001(1)SCC-240. The ratio held in the case pertains to dispute raised after 13 years of termination of service. The ratio cannot be applied to case at hand as workman was pursuing his claim for regularization time to time. Cause of action is continuing. The committee is constituted and ultimately the dispute is raised by Union. It cannot be said barred by time.

15. Turning to the merit of matter Shri A.K.Shashi relies on ratio held in

Case of Union of India versus Kartick Chandra Mondal reported in AIR 2010-SC-3455. In para-13 of the judgment, their Lordship discussed the note of the legal advisor culminated in the aforesaid note of the Dy. Director which clearly indicates that no official order was passed by the Competent Authority and therefore issuing directions to the appellants to absorb the respondents on the basis of the same was unjustified and uncalled for.

Their Lordship discussed they were required to consider pertains to internal communications which are relied upon by the respondents and which were also referred to by the Tribunal as well as by the High Court ex facie the aforesaid communications were exchanged between the officers at the level of board hierarchy only. An order would be deemed to be a government order as and when it is issued and publicized. Internal communications while processing a matter cannot be said to be orders issued by the competent authority unless they are issued in accordance with law.

In present case, the evidence in cross-examination of workman is clear that no order in writing was issued to him for working as clerk in colliery hospital. Ratio held in the above case is not helpful for deciding the controversy as any rule is not brought to my notice that as workman was working on superior post of clerk dehors the cadre scheme. The claim of workman for regularization cannot be accepted. In absence of any rule, I record my finding in Point No.1 in Negative.

16. In the result, award is passed as under:-

- (1) The demand of Shri Kamal Khan S/o Dilshad Khan, Timber Mazdoor, to regularize/confirm his services as a clerk (Registration) w.e.f. January 1993 is not proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer